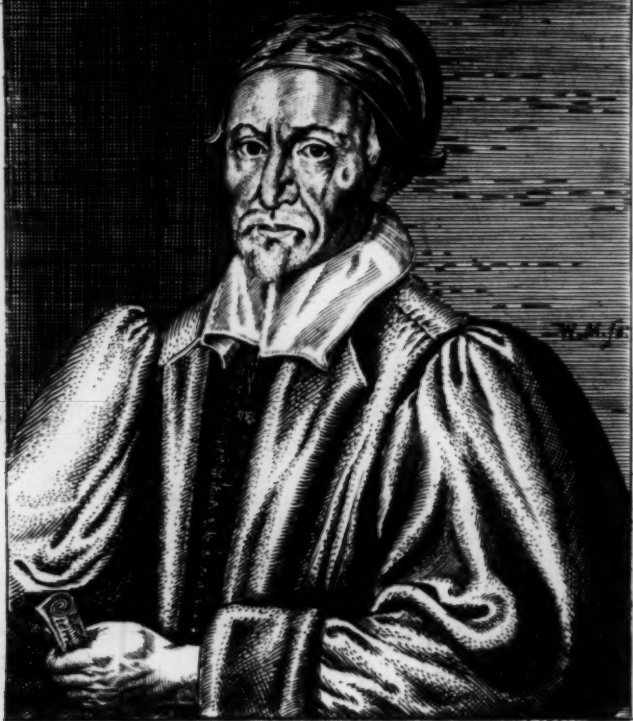


Here JENKINS Aarids, who thundring from the TOWER
 Shook the bold Senat's Legislative Power ;
 Six of whose words twelve Reames of votes exceed
 As mountaines mov'd by graines of mustard-seed:
 Thus gasping Lawes were rescu'd from the Snare,
 He that will save a Crowne must know and dare.
 Sold by I. Giles at Furnivals-Inn-gate. J. Berkenhead.



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25 LEX TERRÆ,

OR,

A brieſe diſcourſe of Law, whereby
it is proved that the ſupreme power
in this Kingdome is in the King only, and
not in the two Houſes of Parliament.

Whereunto are added divers other ſmall
Tracts of the like nature, (*viz*) *A Vin-*
dication, Declaration, Cordiall, The Armes In-
demnity, The inconvenience of long continued
Parliaments, and an Apology for the
Army, Together with A Plea,
Answer, and Remonſtrance.

Written, publiſhed and avowed heereto-
fore, and now reviſed, and recommended
to the practice of the preſent times,
and Poſterity.

Whereunto a Table is annexed.

By DAVID JENKINS, Priſoner
in Newgate.

o *Plebs ſine lege ruit.*

London, Printed for Jo. Gyles, and are
ſold at his ſhop at *Furnivals-Inne*, 1648

ALEX TERRA

A single discount of 10% where by
it is proved that the power
in his Kingdom is not in the
not in the two Houses of Parliament.

Whereunto are added divers other small

Tracts of the like nature (and)
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hatched in their hearts, invented this damna-
ble and damned opinion, that Homage, and
Oath of Allegiance, was more by reason of
the Kings Crowne (that is his Politique Ca-
pacity) than by reason of his person; upon
which opinion they inferred three execrable
and detestable Consequences.

First, if the King do not demean himselfe,
by reason, in the right of his Crowne, his
Leidges are bound by Oath to remove the
King.

Secondly, seeing the King could not be re-
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It belongs to the House of Lords, to reforme erroneous Iudgements given in the Kings Bench, to redresse the delayes of Courts of Iustice, to receive all Petitions, to advise his Majesty with their Counsell, to have their Votes in Voting, or abrogating of Laws, and to propose for the Common good, what they conceive meet. p. 33.

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THIS Parliament beganne 3. *Novemb.* 1640. and in the beginning thereof the King acquitted the Ship-Money, Knighthood-Money, seven Courts of Justice contented to a Trienniall parliament, settled the Forrest Bounds, tooke away the Clarke of the Market, of the Household, trusted the Houses with the Navy, passed an Act not to dissolve this parliament without the Houses assent: No people in the world so free, if they could have been content with Lawes, Oathes, and Reason, and nothing more could, nor can bee devised to serve us, neither hath been in any time before. p. 34.

Notwithstanding all this (*Jan.* 10. 1641.) the King was driven away from *London*, by frequent Tumults, and 2. thirds, and more of the Lords had deserted that House, for the same cause, and the greater part of the House of Commons, left that House also for the same

The Table.

same reason: New men chosen in their places, against Law, by the pretended Warrant of a counterfeit Seale, and in the Kings name, against his consent, leavying War against Him, and seising his Forts, Ports, Magazines, and Revenue, and converting them to his destruction, and the subversion of the Law, and Laud, laying Taxes on the people, never heard of before in this Land, devising new Oathes to oppose the Forces raised by the King, &c. p. 35.

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3. Impossible, the Death of his Majesty (whom God long preserve) dissolving it necessarily.

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God save the King.

[illegible]

To the Honorable Soci-
eties of *Grayes-Inne*,
and of the rest of the
Innes of Court, and
to all the Professors
of the Law.

I Have now spent Forty five
yeares in the Study of the Law
of this Land being my profession,
under, and by the conduct of which
Laws this common-wealth hath
flourished for some ages past in
great splendor and happinesse (jam
seges est ubi Troja fuit.) The
great and full body of this King-
dome hath of late yeeres fallen in-
to an extreame sicknesse; it is
truely said that the cause of the
disease being knowne, the disease
is easily cured. There is none of
you I hope, but doth heartily wish

(2)

the recovery of our common pa-
rent, our universall country (Mori-
bus antiquis fiat res Britannica.)
I call God to witness that this dis-
course of mine hath no other end
then my wishes of the common
good: how farre I have been from
Ambition, my life past, and your
owne knowledge of me, can abun-
dantly informe you: and many of
you well know, that I ever dete-
sted the ship-mony and monopolies,
and that in the beginning of this
Parliament, for opposing the ex-
cesses of one of the Bishops, I lay
under three Excommunications, &
the Examination of seventy seven
Articles in the high Commission
Court. His sacred Majesty:
(God is my witness) made mee a
Judge in the parts of Wales against
my will, and all the meanes I was
able to make; and a patent for my
place was sent me, for the which I
have not paid one farthing, and
the place is of so inconsiderable a
benefit

benefit that it is worth but 80. l. per Annum when paid, and it cost me every year I served twice as much out of my owne estate in the way of an ordinary and singall expence. That which gave mee comfort was that I knew well that his Majesty was a just and a prudent Prince.

In the time of the Attorneys Ships of Master Noy and the Lord Banks, they were pleased to make often use of me, and many references concerning suits at Court upon that occasion came to my knowledge; and as I shall answer to God upon my last account this is true, that all or most of the references which I have seene of that kind (and I have seen many) were to this effect, that his Majesty would be informed by his Counsell if the suits preferred were agreeable to the Lawes, and not inconvenient to his people, before he would passe them. [what could

(4)

a just and pious Prince do more?
Gentlemen: you shall find the cause
and the Cure of the present great
distemper in this discourse, and
God prosper it in your hands,
thoughts, and words, as the case
deserves.

Hold to the *Laws*, this great
body recovers: for sake them, it
will certainly perish. I have re-
solved to tender my selfe a Sacri-
fice for them as cheerfully, and I
hope (by Gods assistance) as con-
stantly as old Eleazer did for the
holy *Laws* of his Nation.

Your Well-wisher

DAVID JENKINS.

Now Prisoner in the Tower.

LEX

LEX TERRÆ.

THE Law of this Land hath three grounds. First, **Custom.** Secondly, **Judiciall Records.** Thirdly, **Acts of Parliament.** The two latter are but declarations of the **Common Law** and **Custom** of the **Realme**, touching **Royall Government.** And this Law of **Royall Government** is a **Law fundamentall.**

The Government of this Kingdome by a **Royall Sovereigne**, hath beene as ancient as history is, or the memoriall of any time; what power this **Soveraignty** alwayes had and used in warre and peace in this land, is the scope of this discourse; That **Usage** so Practised makes therein a **fundamentall Law**, and the **Common Law** of the Land is **common Usage**, **Blowdens Commentaries** 195. For the first of our Kings, thence the **Nor man conquest**, the first **William**, second **William**, **Henry** the

The kings prerogative is a principal part of the common Law. *Comm. Littl.* 344: 27 Hen. 8. *Stamford* *prer. fol. 21* 2 *Pars inflis. fol. 496.* 3 *Pars inflis. pag 34.*

first, Stephen, Henry the second, and Richard the first, the Customes of the Realme touching Royall Government, were never questioned: The said Kings enjoyed them in a full measure. In King Johns time the Nobles and Commons of the Realme conceiving that the ancient Customes and Rights were violated, and thereupon pressing the said King to allow them in the seventeenth of King John, the said Liberties were by King John allowed, and by his Sonne Henry the third, after in the ninth yeere of his Raigne confirmed, and are called *Magna Charta*, and *Charta de Foresta*, declared foure hundred twenty two yeeres sithence by the said Charters.

Now rests to be considered, after the Subjects had obtained their Rights and Liberties, which were no other then their ancient Customes (and the fundamentall Rights of the King as Sovereigne are no other.) How the Rights of Sovereignty continued in practise from Henry the thirds time untill this present Parliament of the third of November, 1640. for before Henry the thirds time, the Sovereignty had a very full Power.

Rex habet Potestatem & jurisdictionem super omnes qui in Regno suo sunt, & a qua sunt jurisdictionis & pacis ad nullum pertinent nisi ad Regiam dignitatem, habet etiam coercionem, ut Delinquentes puniat & coerceat: This proves where the supreme Power is.

Bracton
1 temp. H. 3. l.
4. cap. 24.
Sect. 1.

A Delinquent is he who adheres to the Kings Enemies & so on. Litt. 261. This shewes who are Delinquent.

Omnia sub Rege, & ipse sub nulla nisi tantum Deo, non est inferior sibi Subjectis, non parem habet in Regno suo: This shews where the supreme power is.

Sect. 5. Bract
ibid.

Rex non habet superiorem nisi Deum, facis habet ad penam quod Deum expectat ultorem. This shewes where the supreme power is.

Bracton. l. 5.
tract. 3. de
delictis, cap.
3, Bracton. l.
3. cap. 7.

Treasons, Felonies, and other Pleas of the Crowne, are propria causa Regis: This shewes the same power.

By these passages it doth appeare

what the Custome was for the power of **Soveraignty** before that time, the power of the Militia, of coyning of Money, of making Leagues with foreign Princes, the power of pardoning, of making of Officers, &c. All Kings had them, the said Powers have no beginning.

Sexto Edw. 1. Com. Sur. Litt. 85.
Lege Homage, every Subject owes to the King (*viz*) Faith *de Armis*, *de viris*, *de rebus* *Monere*, the forme of the Oath, *inter vetera statuta* *infradowne*. Wee read of no such, or any Homage made to the King's House, but frequently of such made by them.

It is declared by the Prelates, Earls, Barons, and Commonalty of the Realme, that it belongeth to the King and his Royall Segnion, mightily to defend force of Armies, and all other force against the Kings peace, at all times when it shall please him, and to punish them that shall doe contrary according to the Law and Usage of the Realme, and heereunto they are bound to ayd their Soveraigne Lord, at all seasons when neede shall be. Heere the supream power in the time of Parliament, by both Houses is declared to belong to the King.

At

1. Edw. 1. Com. Sur. Litt. 85.
 1. Edw. 1. Com. Sur. Litt. 85.
 1. Edw. 1. Com. Sur. Litt. 85.

Edward. 1.

7. Ed. 1. fl. a.
 curs as large
 fol. 42.

At the beginning of every Parliament, all Armes are, or ought to be, forbidden to be borne in London, Westminster, or the Subburbs. This condemnes the multitudes comming to Westminster, and the Guards of armed men.

All who held by Knights Service, and had twenty pounds *per annum*, were distraynable *ad Arma militaria suscipienda*. This agrees with the Records of ancient time, continued constantly in all Kings times, but at this Parliament 3. November, 1649. The King out of his grace, discharged this duty, which proves that the power of warre and preparation thereof, belongs not to the two Houses, but only to the King.

The two **Spencers** in **Edm.** 3. time hatched (to cover their Treason) this damnable and damned opinion (viz) That Ligeance was more by reason of the Kings politick capacity then of his person, upon which they inferred these execrable and detestable consequences. First, if the King demeaned not himselfe by reason in the right of his **Crown**, his Liges are bound by Oath to remove him. Secondly, seeing the King could not be removed by suite of Law it was to be

be done by force. Thirdly, that his Lieges be bound to govern in default of him.

All which tenets were condemned by two Parliaments, the one called *statum Regis* in Ed. 2. time; the other by 1. Edw. 3. cap. 2. All which Articles against the *Spencers* are confirmed by this last Statute, the Articles are extant in the booke called *vetere Statuta*. The separation of the Kings person from his power, is the principall Article condemned, and yet all these three damnable, detestable, and execrable consequents, are the grounds whereupon this present time relies, and the principles whereupon the two houses found their cause.

Plowden.

com. 322.

27 aff. Pl. 40.

The Villeine of a Lord, in the presence of the King cannot be seized; for the presence of the King is a protection for that time to him: This shewes what reverence the Law gives to the person of a King.

33 Ed. 3.

ayde de roy.

103 Fitz.

20 H. 7. 16.

Reges, sacri oleo uncti sunt & auctoritate spiritualis jurisdictionis: But the two Houses were never held capable of that power.

Rex est persona mixta cum sacerdotibus & habet Ecclesiasticam & spirituales jurisdictiones: This shewes the Kings power in Ecclesiasticall Causes.

The

The Lands of the King is called in Law *Patrimonium sacrum*: The Houses should not have meddled with that sacred Patromony. *Com. Sur. Lib. 1. Sess. 4.*

The King hath no Peere in his Land, and cannot be judged? *3 Ed. 3. 19.* Ergo the two Houses are not above him.

The Parliament 15. Ed. 3. was repealed, for that it was against the Kings Lawes and prerogative. *4 pars inst. fol. 52.* This sh:wes cleerely the Propositions sent to Newcastle, ought not to have beene presented to his Majesty, for that they are contrary to the Lawes and his Prerogative.

The Lords and Commons cannot assent in Parliament to any thing that tends to the dishonour of the King and his Crowne, to which they are sworne: This condemnes the said Propositions likewise. *4 pars, book 3 inst. fol. 14. 42. E. 3.*

To depose the King, to imprison him untill he assent to certaine demands, a warre to alter the Religion established by Law, or any other Law, or to remove Councellors, to hold a Castle or Fort against the King, are offences against that Law declared to be treason by the resolutions herein after mentioned; by that Law men are bound to ayd the King when warre is levied against him in his *Parliament Rol. num. 7. Rex & consuetudo Parliamenti.*

25 Ed. 3. cap. 2. his Realme. King in his Statute must be intended in his naturall body and person that only can dye; for to compass his death, and declare it by overt Act is declared thereby treason; to encounter in fight such as come to ay to the King in his warres; is treason.

Compassing of the Queens death, of the Kings Eldest Sonne, to coyne his money, to counterfeite his Great-Scal, to levy Warre against him, to adhere to such as shall so doe, are declared by that Act to be high treason. This Statute cannot referr to the King in his politique capacity, but to his naturall, which is inseperable from the politick; for a body politick can have neither Wife, nor Childe, nor levy Warre, nor doe any Act but by the operation of the naturall body: A Corporation or body politick hath no soule or life, but is a fiction of the Law, and the Statute meant not fictitious persons, but the body naturall, conjoynd with the politique, which are inseperable.

The clause in that Act, that no man should sue for grace, or pardon for any offence condemned or forfeitured given by that Act, was repealed by a subsequent Act in 21. R. 2. holden

den unreasonable, without example;
 and against the Lawe and custome of
 the Parliament. This condemnes the
 Proposition for disabling the King to
 Pardon. *4 pars inst it. fol. 42.* The Act *4. pars inst it. fol. 42.*
 of 11. R. 2. so much urged by the o-
 ther side, was an Act to which the
 King consented, and so a perfect Act:
 yet Note the Army then about the
 Towne: Note that that Law is a-
 gainst private persons, and by the 3.
cap. thereof, the treasons there declared,
 are declared to be new treasons made
 by that Act, and not to be drawne to
 example, it was abrogated 21. R. 2.
 and revived by an usurper 1. H. 4. to
 please the people, and by the tenth
 chap. thereof enact that nothing shall
 be treason but what is declared by
 25. Ed. 3.

16. Ed. cap.
 5. 16. R. 2.
 cap. 5. H. 4.

The Regality of the Crowne of
England, is immediately subject to
 God and to none other, Plain words,
 shewing where the supream power
 is.

The Commission of Array is in
 force and no other Commission, *Rot.*
Parlm. 5. H. 4. numb. 24. an Act not
 printed, this Act was repealed by 4.
 and 5. P. & M. cap. 2. this repealed
 by the Act of 1. Jacobi, and so it is
 of force at this day, for the repealing
 Statute

Statute is repealed 4. *pars institut.* fol. 91. & 125. published since this Parliament, by the desire of the house of Commons, their Order is printed in the last lease of the commentaries upon *Magna Charta*.

A booke allowed by Sir Na B. ent called the reason of the War: fol. 65,

Sir Edward Coke, by their party is holden for the Oracle of the Law, who wrote the saide fourth part, in a calme and quiet time, and I may say, when there was no neede to defende the authority of the Commission of Array.

For that objection, that that Commission leaves power to the Commissioners to tax men *secundum facultates*, and so make all mens estates Arbitrary: the answer is, that in levying of publicke aydes upon mens goods and estates, which are variable, and probably cannot be certainly knowne by any but the owners, it is impossible to avoyd discretion in the assessments, for so it ever was, and ever will bee. By this appeares that the Votes of the two Houses against the Commission of Array, were against the Law.

H. 5.

2. H. 5.
4. *pars instit.*
46.

The death of the King dissolves the Parliament, if Kings should referre to the polittick capacity it would continue after his death, 4. *pars instit.* 46. which proves that the King cannot

not be said to be there when he is absent, as now hee is: there is no *inter regnum* in the Kingdome the dissolution of the Parliament by his death, shewes that the beginning and ende thereof referres to the naturall person of the King, and therefore hee may lawfully refuse the Propositions.

2. *H. 5 Chap. 6.* to the King onely it belongs to make Leagues with Forraigne Princes? this shewes where the supream power is, and to whom the Militia belongs.

8. *H. 6. numb. 57. Rot. Parl. Corke H. 4. 4 pars instit. 25.* No priviledge of Parliament is grantable for treason, felony, or breach of the peace; if not to any one Member, not to two, not to ten, not to the major part, 19 *H. 6. 62.* The Law is the inheritance of the King and his people, by which they are ruled, King and people; And the people are by the Lawe bound to ayde the King, and the King hath an inheritance to hold Parliaments, and in the ayds granted by the Commonalty. If the major part of a Parliament commit treason, they must not be Judges of it, for no man or body, can be Judge in his owne cause, and aswell as ten or any number may commit treason, the greater number may aswell. The

32. H. 6. 13.

Plowd. 334.

The King by his Letters patents may constitute a Countie palatine and grant Regall rights, this shews where the supream power is.

Ed. . 4

17. Ed. 4. Rot. Parl. numb. 39. No priviledge of Parliament is grantable for treason, felony, or breach of the peace, if not for one, not for two, or more, or a major part.

Calvins Case

7. par. fol.

11, 12.

The same persons must not bee Judge and party. A corporate body can commit no treason, nor can treason be committed against a corporate body; 21. E. 4. 13. and 14. but the persons of the men who make that body may commit treason, and commit it against the naturall person of him who to some purposes is a body corporate, but *quatenus corporate* no treason can bee committed by or against such a body; that body hath no soule, no life, and subsists onely by the fiction of the Law, and for that reason the Lawe doth conclude as aforesaide; therefore the Statute of 25. E. 3. must bee intended of the Kings naturall person, conjoynd with the politike which are inseparable, and the Kings naturall person being at Holmby, his politike is there also, and not at Westminster; for the politike and naturall make one body indivisible. If

Plow. com.

213.

If all the people of England should breake the league made with a forraigne Prince, without the Kings consent, the league holds and is not broken, and therefore the representative body is inferior to his Majesties.

The King may erect a Court of Common pleas in what part of the Kingdome he please by his letters patents; can the two Houses doe the like?

1. *Ed. 5. fol. 2.* It cannot be said that the King doth wrong, declared by all the Judges and Serjeants at Law then there.

The reason is, nothing can be done in this Common wealth by the Kings grant or any other act of his, as to the Subjects persons, goods, Lands or liberties, but must be according to established Lawes, which the Judges are sworne to observe and deliver betweene the King and his people impartially to rich and poore, high and low; and therefore the Justices and the Ministers of Justice are to be questioned and punished if the Lawes be violated; and no reflection to be made on the King. All Counsellors and Judges for a yeere and three months untill the tumults began this Parliament were all left

to the ordinary course of Justice, what hath beene done since is notorious.

R. 3.

1 R. 3. cap.
15.

For great Causes and considerations an Act of Parliament was made for the surety of the said Kings persons if a Parliament were so tender of King Rich. the 3. the Houses have greater reason to care for the preservation of his Majesty.

Hen. 7.

21 H. 7. c. 1.

The Subjects are bound by their allegiance to serve the King, for the time being, against every Rebellion, power and might, reared against him within this Land, that it is against all Lawes, reason and good conscience, if the King should happen to be vanquished that for the said deede and true duty and allegiance they should suffer in any thing, it is ordained they should not; and all Acts of procasse of Law hereafter to be made to the contrary are to be void. This Law is to be understood of the naturall Person of the King, for his politick capacity cannot be vanquished, nor war reared against it.

Relapsers are to have no benefit of this Act.

22 H. 7. 2.

4 H. 7. 18

Henry, 8.

7 H. 7. 14.

It is no Statute, if the King assent not to it, and he may dissent, this proves the negative voice.

The

The King hath full power in all causes to doe justice to all men; this is affirmed of the King, and not of the two Houses.

24 H. 8. c. 12.

25 H. 8. cap.

21.

The Commons in Parliament acknowledge no superior to the King under God, the Houses of Commons confesse the King to be above the representative body of the Realm.

Of good right and equity the whole and sole power of pardoning treasons, felonies &c. belong to the King, as also to make all Justices of Oyer and Terminer, Judges, Justices of the peace, &c. This Law condemns the practise of both Houses at this time.

27 H. 8. c. 24.

Note.

The Kings Royall Assent to any Act of Parliament signed with his hand, expressed in his Letters patents under the great Seale, and declared to the Lords and Commons shall be as effectually, as if he assented in his owne person; a vaine Act if the King be virtually in the Houses.

31 H. 8. cap.

22.

The King is the head of the Parliament, the Lords the principal members of the body, the Commons the inferiour members, and so the body is composed, therefore there is no more Parliament without a King, then there is a body without a head.

Dier 38. H.

8. folio 59. 60.

There

There is a Corporation by the Common-law, as the King, Lords, and Commons, are a corporation in Parliament, and therefore they are no body without the King.

14 H. 8. fol.
3.

34 Ed. 3. 48
1 Ed. 4. 2.

The death of the King discharges all mainprise to appeare in any Court or to keepe the peace.

2 H. 4. 8.

1 H. 7. 10.

1 Ed. 3. 2.

The death of the King discontinues all Pleas by the Common-law, which agreeeth not with the virtuall power insisted upon now.

Ed. 6.

1 Ed. 6. c. 7.

Writs are discontinued by the death of the King; Patents of Judges, Commission for Justices of the Peace, Sheriffs, Escheators, determined by his death: Where is the virtuall power?

1 Ed. 6. c. 2.

All authority and jurisdictions spirituall and temporall is derived from the King, therefore none from the Houses.

2. 3 Ed. 6. c.

2.

11 H. 7. c. 1.

Calvins

Cafe.

Sapays

Cooke.

1 Pars inst. 1.

62.

His Majesties Subjects, according to their bounden duties, ought to serve the King in his Warres, of this side or beyond the Seas, beyond the seas is to be understood for wages: This proves the power of warres, and preparation for warre to be in the King.

5. 6. Ed. 6. 11.

It is most necessary both for common policy and duty of the Subject,

to reſtraine all manner of ſhamefull
 ſlanders againſt their King, which
 when they be heard, cannot but be o-
 dible to his true and loving ſubjects,
 upon whom dependeth the whole u-
 nity and univerſall weale of the
 Realme. This condemnes their con-
 tinuing of the weekly Pamphlets,
 who have beene ſo foule mouthed a-
 gainſt his Maieſty.

The puniſhment of all offenders
 againſt the Lawes, belongs to the
 King, and all iuriſdictions doe, and
 of right ought to belong to the King.
 This leaves all to his Maieſty.

All Commiſſions to levy men
 for the warre, are awarded by the
 King: The power of warre onely
 belongs to the king.

Q. Mary.
1 Mar. Pl. 1.
cap. 2.

45 P & M.
c. 3.
Q. Edw.
10 Edw. Pl.
313.

It belongs to the king to defend
 his people, and to provide Armes and
 Force: No ſpeech of the two Hou-
 ſes.

Roy ad ſole gouvernement de ſes ſubjects. Plow. 234.
Corps naturall le Roy & politique ſunt un
corps. That is, the king hath the ſole
government of his Subjects, the bo-
dy politick and the naturall body of
the king make one body, and not di-
vers, and are inſeperable and indivi-
ſible.

242. 213. Ca.
vins caſe 7.
parſ ſol. 13.
Plow. 234.
213.

The body naturall and politique
 make

P. l. vi. 934. make one body, and are not to be severed : Ligeance is due to the naturall body, and is due by nature, Gods Law, and Mans Law, cannot be forfeited nor renounced by any means, it is inseperable from the person.

243. 223. Calvins case 7. pars fol. 12. Every Member of the House of Commons, at every Parliament takes a corporall Oath : That the King is the supream and onely Governour in all causes in all his Dominions, otherwise he is no Member of the House ; The words of the Law are in all causes, over all persons.

The said Act of 1 *Eliz.* is but declarative of the ancient Law, *Cawdrin Case ibid.*

43 Eliz. 3. pars instit. fol. 6. 2. The Earle of Essex, and others assembled multitudes of men to remove Councillors, adjudged Treason by all the Judges of England.

39 Eliz. Hil. 1 Jacobi ibid. To depose the king, or take him by force, to imprison him untill he hath yielded to certaine demands, adjudged Treason, and adjudged accordingly in the Lord Cobdens Case.

39 Ed. Brady. case f. 9. & 16. By all taking of the Kings Castles, Forts, Ports or Shipping, *Brooke* treason 24. *3. & 4. Philip and Mary, Distr, Stamford Case concerning Scarborough.* Arising to alter Religion established, or any Law, is treason ; so for taking of the Kings Castles, Forts, Ports or Shipping, *Brooke* treason 24. *3. & 4. Philip and Mary, Distr, Stamford Case concerning Scarborough.*

The

The Lawe makes not the servant greater then the Master, nor the subject greater then the King, for that were to subvert order and measure.

The Law is not knowne but by Usage, and Usage proves the Lawe, and how Usage hath beene is notoriously knowne.

The King is our onely rightfull and lawfull Liege Lord and Sovereigne, we doe upon the knes of our hearts recognize constant Faith, Loyalty, and Obedience to the King and his Royall progeny, in this high Court of Parliament, where all the body of the Realme is either in person, or by representation: Wee doe acknowledge that the true and sincere Religion of the Church is continued and established by the King. And doe recognize, as wee are bound by the Law of God and Man, the Realme of England and the Imperiall Crowne thereof doth belong to him by inherent birth-right, and lawfull and undoubted succession, and submit ourselves and our posterities for ever, untill the last drop of our blood be spent, to his rule; and beseech the King to accept the same as the first fruits of our Loyalty and faith to his Majesty and his posterity for ever; and for that this Act is

not

10. Eliz.
Plow. 319.

K. James
1 Jac. cap. 1.
2 Ed. 4. fol. 2.

not compleat nor perfect without his Majesty's assent, the same is humbly desired. This proves that the Houses are not above the King; that Kings have not their titles to the Crown by the two Houses, but by inherent birth-right, and that there can be no Statute without his expresse assent, and destroys the Chimera of the Kings virtuall being in the Houses.

3 Jac. cap. 4.

23. Eliz. c. 1.

To promise obedience to the Pope or any other State, Prince or Potentate, other then the King, his heire and successors, is treason; and therefore those persons who call the houses the Estates offend this Law.

R. Charles.

Collection

of Ordinances

fol. 727.

1. pars ib. fo.

728.

Such Bills as his Majesty is bound in conscience and justice to passe, are no Law without his assent.

To designe the ruine of the King, person, or of Monarchy, is a monstrous and injurious charge.

ibid. fol. 865.

Ubi Lex non distinguit, non est distinguendum, all the aforesaid Acts and Lawes doe evidently prove the Militia to belong to the king: that the king is not virtually in the two Houses; that the king is not considerable separately in relation to his politick capacity: that the king is not a person trusted with a power, but that it is his inherent birth-right from God,

Nature,

Nature, and Law, and that he hath not his power from the people: These Lawes have none of those distinctions of naturall and politick, *abstractum & concretum*, power and person: in *Cæsars* time this Island had Kings, and ever since, which is almost 17 hundred yeeres agoe.

No King can be named, in any time, made in this kingdome by the people; A Parliament never made **King**, for they were Kings before: the Parliaments are summoned by the Kings Writs, which for Knights, Citizens and Burgessees begins thus, *vir.*

Rex vic. Wilts. Saltem. Quia Nos de avisamento & assensu consilii nri. pro quibus. arduis & urgentib. negotiis nos statum & defensionem Regni nri. Ang. & Eccles. Anglic. concernentibus quoddam Parliamentum nrum, apud B. teneri ordinavimus & ibid. cum Prelatis Magnatib. & proceribus dicti Regni nri. Colloquium habere & tractatum, tibi precipimus firmiter injungendo qd. facta Proclamatione in

B

prox.

4. pars In-
fir. 241.

prox. Comitatu tuo post receptio-
nem ejusd. Brevis, duos Milites
gladiis cinctos, &c. eligi facias
ad faciendum & consentiendum
hiis quæ tunc ibidem de Communi
Concilio nro. Angl. faventi Deo
contigerit ordinari super Negotiis
antedictis, ita quod pro defectu po-
testatis hujusmodi seu propter im-
providam electionem Milium,
Civium, & Burgensium præd.
dicta negotia nra, infecta non re-
manerent.

4. pars Infir.
fol. 3 & 4.

The King is *Principium*, caput & fi-
nis *Parliamenti*, the body makes not
the head, nor that which is posterior,
that which is prior, *consilium non est*
Preceptum, *consilarii non sunt Precepto-*
res, for Counsell to compell a consent;
hath not beene heard of to this time
in any age, and the house of Com-
mons, by the writt, are not called *ad*
consilium; the writts to the twelve
Judges, Kings Counsell, twelve Ma-
sters of the Chancery are *consilium im-*
pensuri, and so of the Peeres. The
Writts for the Comminality, *Ad facien-*
dum & consentiendum: Which shews
what power the representative body
hath

hath, they have not power to give an Oath; neither doe they claime it.

The King at all times, when there is no Parliament, and in Parliament is assisted with the advice of the Judges of the Law, 12 in number, for England at least hath 2 Sergeants when fewest; an Attorney and Solicitor, twelve Masters of the Chancery, his Councell of State consisting of some great Prelates, and other great Personages, versed in State affaires, when they are fewest to the number of twelve. All these persons are alwayes of great substance, which is not preserved, but by the keeping of the Law; The Prelates versed in divine Law, the other Grandees in affaires of State, and managery of Government; The Judges, Kings Sergeants, Attorney, Solicitor, and Masters of the Chancery versed in the Law and Customes of the Realme: All sworne to serve the King and his people justly and truely, the King is also sworne to observe the Lawes, and the Judges have in their Oath a clause, that they shall doe common right to the Kings people, according to the established Lawes, notwithstanding any command of the King to the contrary, under the Great Seale

The Oath
of the Iustices 18 of E.
3. among
Statutes of
that year.

or otherwise, the people are safe by the Lawes in force without any new: The Law finding the Kings of this Realme assisted with so many great men of Conscience, Honour and skill in the rule of Common-wealth, knowledge of the Lawes, and bound by the high and holy bond of an Oath upon the Evangelists, settles among other powers upon the King, a power to refuse any Bill agreed upon by both Houses, and power to pardon all offences, to passe any Graunts in his Minority, (there are many great persons living hold many a thousand pound a yeer by patents from *Edward* the sixth, passed when he was but ten yecres of age) nor to be bound to any Law to his prejudice, whereby he doth not binde himselfe, power of warre and peace, coyning of Money, making all Officers, &c. The Law, for the reasons aforesaid, hath approved these powers to be unquestionable in the King, and all Kings have enjoyed them till 3 Nov. 1640.

It will be said notwithstanding all this fence about the Lawes, the Lawes have beene violated, and therefore the said powers must not hold, the two Houses will remedy this.

The answer to this is evident:

These

There is no time past, nor time present, nor will there be time to come, so long as men manage the Law; but the Lawes will be broken more or lesse, as appears by the story of every age. All the pretended violations of this time were remedied by Acts to which the King consented before his departure 10. Jan. 1641. being then driven away by Tumults: And the Houses for a yeere and almost three Moneths: From 3. Nov. 1640. to 10 Jan. 1641. as aforesaid, being a yeere and almost three moneths, had time and liberty to question all those persons who were either causes or instruments of the violation of any of the Lawes.

Examine how both Houses remedied them in former times. First, touching Religion, what hath beene done this way? Both Houses in *Henry* the eighths time tendred to him a Bill to be passed called commonly the Bill of the six Articles, this was conceived by them to be a just and a necessary Bill: Had not *Henry* the eight done well to have refused the passing of this Bill? Both Houses tendred a Bill to him to take the reading of the Scriptures from most of the Laity: Had not King *Henry* the

B. 3. eight.

eight deserved much praise to reject this Bill ? In *Queene Mariest* time both Houses exhibited a Bill to her to introduce the Popes power and the Roman Religion ; had not *Queene Mary* done well to have refused this Bill ? Many such instances may be given. The ~~two Houses~~ now at *Westminster* I am sure will not deny but the refusall of such Bills had beene just, the King being assisted as aforesaid, and why not so in these times ?

For the Civill Government what a Bill did both Houses present to *Richard* the third , to make good his Title to the Crowne ; had it not beene great honour to him to have rejected it ? What Bills were exhibited to *Henry* the eight by both Houses for bastardizing of his Daughter *Elizabeth*, a *Queene* of renowned memory , to settle the Crowne of this Realme , for default of Issue of his body, upon such persons as he should declare by his Letters Patents, or his last will, and many more of the like ? had not this refusall of passing such bills magnified his vertue, and rendered him to Posterity in a different Character from what he now hath ?

And by the experience of all times and the consideration of humane frailty,

fraiky, this conclusion is manifestly deduced, that it is not possible to keep men at all times (be they the Houses, or the King and his Councell) but there will be sometimes some deviation from the Lawes, and therefore the constant and certaine powers fixed by the ancient Law must not be made void, and the Kings Ministers; the Lawes doe punish where the Law is transgressed, and they onely ought to suffer for the same.

In this Parliament the Houses exhibited a bill to take away the suffrages of Bishops in the upper House of Parliament, and have since agreed there shall be no more Bishops at all, might not the King if he had so pleased have answered this bill with *Le Roy' aviserà*, or *ne veult*? it was against *Magna Charta*, *Articuli Cleri* and many other Acts of Parliament. And might have farther given these reasons, if it had so pleased him for the same: First, that this Bill destroyes the Writ whereby they are made two Houses of Parliament, 14. Hen. 7. fol. 22. *Evesq; est signior de grand honneur*. the King in the Writ being *cum prelati colloquium habere*: Secondly, they have beene in all Parliaments since wee had any, and voted, but in

such wherein they themselves were concerned : And there have bene Bishops heere since we were Christians, and the Fundamentall Law of the kingdom approves of them : If any of them were conceived offensive, they were left to justice, and his Majesty would put in inoffensive men in their places ; but since his Majesty hath passed the bill for taking away their Votes in Parliament, it is a ~~Law~~ that binds us so far.

Upon the whole matter the Law hath notab'y determined that Bills agreed by both Houses, pretended to be for the publick good, are to be judged by the King, for in all Kings Raignes bills have bene preferred by both Houses, which alwayes are pretended to be for the publique good, and many times are not, and were rejected with *Roy's advisers*, or *Roy ne vult*.

This Parliament began the 3 of Novem. 1640, before that time in all the Kings reign no armed power did force any of the people to do any thing against the Law ; what was done, was by his Judges, Officers, Referees & Ministers from that time until the 10 of Jan. 1641. when the king went from London to avoyd the danger of frequent tumults, being a year and 3 months, Privy Counsellors and all his Iustices and Ministers were left to the Iustice of the Law, there wanted not time to punish punishable men.

The Sphere of the House of Commons is to represent the grievances of the Countrey, to grant aydes for the King upon all fit occasions extraordinary, to assent to the making or abrogating of Lawes: The O.b of the house of Lords, or to reforme erroneous judgements given in the Kings Bench, to redresse the delayes of Courts of Justice, to receive all Petitions, to advise his Majesty with their Councell, to have their Votes in making or abrogating of Lawes, and to propose for the common good, what they conceive meete.

Lex non cogit ad impossibile, Subjects are not to expect from Kings impossible things, so many Judges, Councellours, Sheriffs, Justices of the Peace, Commissioners, Ministers of State, that the King should over-look them all, cannot be, it is impossib'e.

The King is virtually in his ordinary Courts of Justice; so long as they continue his Courts; their charge is to administer the Lawes in being, and not to delay, deferre, or sell Justice for any Commandement of the King. Wee have Lawes enough; *Instrumenta boni seculi sunt boni viri*, good Ministers, as Judges and Officers are many times wanting, the

houses propose new Lawes, or abrogation of the old, both induce novelty ; the Law for the reasons aforesaid, makes the King the onely Judge, who is assisted therein by a great number of grave, learned and prudent men, as aforesaid.

For the considerations aforesaid the Kings Party adhered to him, the Law of the Land is their Birthright, their Guide, no offence is committed where that is not violated; they found the Commission of **Array** warranted by the Law ; they found the King in this Parliament to have quitted the **Ship-money**, **Knight-hood-money**, **seven Courts of Justice**, consented to a **Triennial** all Parliament, settled the **Forreign bounds**, tooke away the **Clarke of the Market** of the household, trusted the House with the **Prayer**, passed an **Act not to dissolve this Parliament** without the Houses assent ; no people in the world so free if they could have beene content with **Lawes, Oathes, and reason**, and nothing more could or can be devised to secure us, neither hath been in any time.

Notwithstanding all this we found the King driven from **London** by frequent

frequent tumults, that two thirds and more of the Lords had deserted that house, for the same cause, and the greater part of the House of Commons left that House also for the same reason; new men chosen in their places against **Law**, by the pretended Warrant of a **counterfeit Seale**; and in the Kings name against his consent, levying warre against him, and seizing his Ports, Forts, Magazines and Revenue, and converting them to his destruction, and the subversion of the Law and Land, laying Taxes on the people, never heard of before in this Land; devised new Oathes to oppose Forces raised by the King, nor to adhere to him, but to them in this War which they call the **Negative Oath**, and the **Uolo and Covenant**.

By severall wayes never used in this kingdome, they have raised monies to foment this warre, and especially to enrich some among them; namely, first, **Crosse**, secondly, **Contributions**, thirdly, **Sequestrations**, fourthly, **fift-parts**, fifthly, **Twentieth-parts**, sixthly, **Seale-money**, seventhly, **Sale of Plundered goods**, eighthly, **Loanes**, ninthly, **Benevolences**, tenthly, **Collecti-
ons**

one upon their fast-daves, eleventhly, new Impositions upon Merchandizes, twelfthly, Guards maintained upon the charge of private men, thirteenthly, filly Subsidies at one time, fourteenthly, Compositions with such as they call Delinquents, fifteenthly Sale of Bishopps Lands, &c.

1. R. 3. cap.
3. B. 2. li.
3 c. 8 Stan.
ford. 192.
St Ger.
Fleetwoods
Case. 8. pars
Cook. 7. H.
last case.

From the Kings Privy meanes of subsistence are taken; before any indictment, their Lands seized, their goods taken, the Law allowes Treason or Felony attained, *Nec sibi et familiae suae in vita et vestitu*, where is the Covenant? Where is the Petition of Right? Where is the liberty of the Subject?

First, wee have ayded the King in this warre contrary to the Negative Oath, and other Votes: Our warrant is the twenty fifth of Edward the third, the second Chapter, and the said resolutions of all the Judges.

4. pars Instit.
125.
2. Instit.
696.

The Law so at the Edition of that booke. *Hutton, and Crooke.*

Secondly, wee have maintained the Commission of *Sequestrum*, by the Kings Command, contrary to their Votes: Wee are warranted by the Statute of the fifth, of Henry the fourth, and the judgement of Sir Edward Coke, the Oracle of the Law as they call him.

Thirdly, wee maintained Arch-

Bishopps

Bishops and Bishops, whom they would suppress. Our warrant is, *Magna Charta*, and many Statutes more.

Fourth'y, wee have maintained the Booke of **Common=prayer**, they suppress it: Our warrant is five Acts of Parliament in *Edward the first*, and *Queen Elizabeth* same, 5 *Pe'che* 35. *Elizabeth inter placita Corona in Banco Regi*, New booke of Entries, fol. 252 *Pewy*, for publishing two scandalous Labels against the Church Governement, was indicted, arraigned, attainted, and executed at Tyburne.

Fifthly, we maintained the **Whittia** of the kingdome to belong to the **King**, they the contrary: Our warrant is the Statute of the seventh of *Edward the first*, and many Statutes since, the practice of all times, and the Custom of the Realme.

Sixthly, wee maintained the contraverting of the great Seale to be high Treason, and so of the usurpation of the **Kings Forts, Ports, Shipping, Castles, and his Revenues**, and the Coping of **Money**, against them: Wee have our warrant by the said Statute of the twenty fifth of *Edward the third*, Chapter the second, and divers others

thers since , and the practise of all times.

Seventhly, wee maintaine that the **King is the only supreme Governour in all causes** : They, that his Majesty is to be governed by them : Our warrant is the Statutes of the first of *Queene Elizabeth* , Chapter the first , and the fifth of *Queene Elizabeth* the first.

9. Ed. 4. fol. 4.
 Eighthly, Wee maintaine that the **King is King by an inherent birth-right, by nature , by Gods Law, and by the Law of the Land.** They say his Kingly right is an Office upon trust : Our warrant is the Statute of the first of *King James*, Chapter the first. And the resolution of all the Judges of *England* in *Calvins Case*.

Ninthly, wee maintaine that the **politick capacity is not to be severed from the naturall.** They hold the contrary : Our warrant is two Statutes (*viz*) *exilium Hugonis* in *Edward* the seconds time, and the first of *Edward* the third Chapter the second, and their Oracle who hath published it to Posterity , that it is **damnable, detestable, and execrable Treason,** *Calvins Case pars 7. fol. 11.*

Tenthly, wee maintaine that *who*
aydes

apdres the King at home or abroad, ought not to be molested or questioned for the same, they hold and practise the contrary ; Our warrant is the Statute of the eleventh of *Henry the seventh*, Chapter the first.

Eleventhly, wee maintaine that the King hath power to dissaut to any Bill agreed by the two Houses ; which they deny : Our warrant is the Statute of the second of *Henry the fifth*, and the practice of all times, the first of *King Charles*, Chapter the seventh, the first of *King James*, Chapter the first.

Twelfthly, wee maintaine that Parliaments ought to be holden in a grave, and peaceable manner, without tumults ; They allowed multitudes of the meaneſt sort of the people to come to *Westminster* to cry for justice when they could not have their will, and keepe guards of armed men to wait upon them : Our warrant is the Statute of the seventh of *Edward the second*, and their Oracle.

Coll. of
Ord. fol. 313

Thirteenthly, wee maintaine that there is no State within this kingdome but the Kings Majesty, and that to adhere to any other State within this kingdome is high Treason : Our warrant is the Sta-

tute

tute of the third of King *James*, Chapter the fourth, and the twenty third of *Queene Elizabeth*, Chapter the first.

Fourteenthly, wee maintaine that to lye by a warre to remeibe Counsellours, to alter Religion, or any Law established is high Treason; They hold the contrary: Our warrant is the resolutions of all the Judges of *England* in *Queene Elizabeths* time, and their Oracle agrees with the same.

Fifteenthy, wee maintaine that no man should be imprisoned, put out of his lands, but by due course of Law, and that no man ought to be adjudged to death but by the Law established, the Customes of the Realme, or by Act of Parliament; They practise the contrary in *London*, *Bristol*, *Kent*, &c. Our warrant is *Magna Charta*, Chapter the twenty ninth, the Petition of Right, the third of King *Charles*, and divers Lawes there mentioned.

Wee of the Kings party, doe and doe detest Monopolies, and Ship-money, and all the grieuances of the people as much as any men living, wee doe well know that our estates, lives, and fortunes are preserved.

ved by the Lawes, and that the King is bound by his Lawes, wee love Parliaments, if the Kings Judges, Counsell or Ministers have done amisse, they had from the third of November, 1640. to the tenth of January, 1641. time to punish them, being all left to justice, **where is the Kings fault?**

The Law saith **the King can doe no wrong**, that he is *medius Regni pater patrie sponsus Regni qui per annum*, is espoused to his Realme at his Coronation; The King is Gods Lievtenant, and is not able to doe an unjust thing, these are the words of the Law.

11 pars Cooke
Reports
Magdalen
Colledge
Case.

One great matter is pretended, that the people are not sure to enjoy the Acts passed this Parliament, A succeeding Parliament may repeale them; The objection is very weake, a Parliament succeeding to that may repeale that repealing Parliament: That feare is endlesse and remedlesse, for it is the essence of Parliaments being compleat, and as they ought to be, of Head, and all the Members, to have power over Parliaments before; Parliaments are as the times are; If a turbulent faction prevayles the Parliaments are wicked as appeares by the examples recited before of extreme wicked

wicked Parliaments ; if the times be
 sober and modest, prudent and not bi-
 asseſſed, the Parliaments are right good,
 and honourable , and they are good
 medicines and ſalves ; but in this
 Parliament *exceſſit medicina medium.*

In this cauſe and warre betweene
 the Kings Maieſty, and the two Hou-
 ſes at *Weſtmiſter* , what guide had the
 Subjects of the Land to direct them
 but the **Lawes** ? What means
 could they uſe to diſcerne what to fol-
 low, what to avoyd, but the Lawes ?
 The King declares it **Treſon** to ad-
 here to the Houſes in this warre: The
 Houſes declare it **Treſon** to adhere
 to the King in this warre : The Sub-
 jects for a great and conſiderable part
 of them (Treſon being ſuch a crime
 as forfeits life and eſtate, alſo renders
 a mans Poſterity bale, beggerly, and
 infamous) looke upon the Lawes, and
 finde the **Letter of the Law** re-
 quires them to aſſiſt the King, as
 before is maniſeſted ; was ever Sub-
 ject criminally puniſht in any age or
 Nation for his purſuit of what the
 Letter of the Law commands ?

The Subjects of the kingdome
 finde the diſtinction and interpretation
 now put upon the Lawes of *Ab-
 ſtraſum & Concretum*, Power and Per-
 ſon,

son, body politick, and naturall, personall presence and virtuell, to have beene condemned by the Law; and so the Kings Party had both the Letter of the Law, and the interpretation of the Letter cleared to their judgments, whereby they might evidently perceive what side to adhere to, what satisfaction could modest peaceable and loyall men more desire?

A verbo legis in criminibus & poenis non est recedendum, hath beene an approved maxime of Law in all ages and times: If the King be King and remaine in his Kingly Office (as they call it) then all the said Lawes are against them without colour; they say the said Lawes relate to him in his Office, they cannot say otherwise, they make Commissions and pardons in the Kings name, and the person of the King and his body politick cannot, nor ought to be severed as hath beene before declared: And the Members of both Houses have sworne constantly in this Parliament that the King is the onely supreme Governour in all causes, over all persons at this present time.

For what of verball or personall commands of the King which is objected,

Coll. of Ordinances
777.

5. Eliz. cap. 1.
1. Eliz. cap. 1.

jected; wee affirme few things to be
 subject thereto by the Law: But his
 Majesties Command under his great
 Seale, which in this warre hath beene
 used by the Kings Command for his
 Commission to leavy and array men
 that is no personall command (which
 the Law in some cases disallows)
 but that is such a command, so made
 as all men hold their Lands by, who
 hold by Patents; all Corporations
 have their Charters which hold by
 Charters, and all Judges and Officers
 their places and callings.

Ob. It is objected, the King cannot
 suppress his Courts of Justice,
 and that this war tended to their sup-
 pression.

Sol. The answer is, the King cannot nor
 ought to suppress Justice, or his
 Courts of Justice, nor ever did; but
 Courts of Justice by *abuser or non user*
 cease to be Courts of Justice; when
 Judges are made and proceedings in
 those Courts holden by others then
 Judges made by the King, and against
 his command under the great Seale,
 and his Majesty is not obeyed, but
 the Votes of the Houses, and his
 Judges breaking that condition in
 Law, of trust and loyalty, implied in
 their Patents, are no longer his Jud-
 ges;

7 pars The
 Earle of
 Westmer-
 lands Case.
 1 Elix. Dier.
 165. 7. pars
 Cooke.

The case of
 discontinu-
 ance of
 Proccesse.

ges; they obey and exercise their pla-
ces by vertue of Writs and Processes
under a counterfet Seale: The king
onely can make Judges, the twenty
seventh of *Henry* the eighth, Chapter
the twenty fourth, **Justices of the
Peace, &c.** The kings Patent makes
Judges: The chiefe Justice of the
kings Bench is made by the kings
writ onely of all the Judges.

28. H 2.
Dist 11.

The **Great Seale** is the key of
the kingdome, and meete it is that
the king should have the key of
his kingdome about him; which
confutes their saying that the king got
the Seale away surreptitiously.

*Articuli su-
per chartas
cap. 5.
2 pars instit.
552.*

The king, and he only may remove
his courts from *Westminster* into some
other place: at *York* the Tearnies
were kept for seven yeeres, in *Ed-
ward* the first's time; but for the
Court of Common pleas, the place
must be certaine; for the kings
Bench and Chancery, the king by the
Law may command them to attend
his person alwayes if it seeme so
meete unto him; but the removing
of the Common pleas must be to a
place certaine, and so notified to the
people.

*Britten fol.
23.*

All the bookes of Law in all times
agree, that the king may grant conu-
sance

6 H. 7. 9.
6 Eliz. Dier.
226.

since of all Pleas at his pleasure with-
in any County or Precinct to be hol-
den there onely, and remove the
Courts from *Westminster* to some other
place (for the Common Pleas, the
place must be certaine, and so notifi-
ed to the people) and adjourne the
Termes as he sees cause: All which
the two Houses have violated.

Some

Some seeming objections of Master Prinn's, scattered in divers books answered, and the truth thereby more fully cleared.

THE first of Henry the fourth, 1 Ob.
revived the Statute of the eleventh of Richard the second, and repeales the one and twentieth of Richard the second, whereby certaine persons were declared Traytors to the King and kingdome, being of the Kings Party, by 11. Rich. 2.

True, but note, the eleventh of Richard the second, Sol. 1
a Parliament beset with 40000 men, and the King assents to it, so an Act, and besides the first of Henry the fourth declares, that the Treasons mentioned in the Act of the eleventh of Richard the second, being but against a few private men, shall not be drawne into example, and that no Treason should be but such as the twenty fifth of Edward the third declares: All these are Acts 9 Ed. 4. fol. 30.
passed by the King, and the three Estates, nor to be drawne into example in a tumultuous time, by a besieged Parliament, with an Army, and
Henry

Henry the fourth being an Usurper makes that Act of the first of Henry the fourth to secure himselfe : Alfo what is this to the Votes of the two Houses onely at this time ?

2. *ch.*

The Court of Parliament is above the King , for it may avoyd his Charters, Commissions, &c. granted against the Law.

Sol.

And the Law is above the King.

By the same reason you may say that the Courts of Chancery, or any of the Courts of Law at *Westminster* are above the king, for they make of no effect the kings Charters , which are passed against the Law ; and the king is subject to Law, and sworne to maintaine it. Againe, it is no Parliament without the king, and the king is the head thereof , he is *principium caput & finis* of a Parliament, as *Modus tenendi Parliament*, hath it , and two Houses onely, want *principium caput & finis* of a Parliament, and it is a sorry Parliament that wants all these : And therefore to say that Parliaments are above the King, is to say the King is above himselfe.

3. *ch.*

The Parliament can enlarge the Kings prerogative , therefore it is above him.

Sol.

If the King assent, otherwise not ;

and

and then it is an Act of Parliament,
and otherwise no Act.

Bracton saith, God, the Law, and 4. 23
the Kings Court, (v. 2) his Earles and
Barons are above the King, viz. in
Parliament as Mr. *Prinse* expounds it. 502.

Where is then the House of Com-
mons? Indeed, take God, the Law,
and Earles and Barons together, it is
true; but to affirme that the Earles
and Barons in Parliament are above
the King (the King being the head of
the Parliament, and they one of the
members) how an inferiour member
is above the head, is hard to conceive;
besides, that position destroyes all Mr.
Prinse's discourse, who attributes so
much to the House of Commons. 5 04.

The King is but one of the three
Estates of Parliament, and two are
greater then one; therefore above.

The Legs, Armes, and Trunke of 502
the body are greater then the Head,
and yet not above, nor with life with-
out it; the argument holds for quan-
tity, but not for quality; and in truth,
the King is none of the three Estates
but above them all; the three Estates
are, the Lords Spirituall, the Lords
Temporall, and the Commons; *Coke*,
their Oracle, in his Chap. of Parl. f. 1.

In Corporations, the greater num-

6 Ob.

ber of voyces make all the Acts of the Corporation valid ; therefore so in Parliament.

Sol.

By this reason the Kings assent is needelesse, and to no end, and all the Acts of Parliament formerly mentioned , and Law-bookes have quite mistaken the matter , which with unanimous voice requires the Kings assent as necessary : besides , the Corporations are so constituted by the kings Charters, and the greater number of Votes shall make their Acts valid.

7 Ob.

The King, as King, is present in his Parliament as well as in all other his Courts of Justice, howbeit he is not there.

Sol.

In his other Courts of Justice he hath no voice , he is none of the Judges, in the Parliament he hath ; if his presence be not necessary , his voice is not, nor his assent.

8 Ob.

Soveraigne power of Parliaments, 46.

7 4 Sol.

The originall prime legislative power of making Lawes, to bind the Subjects and their posterity, rests not in the King, but in the Kingdome and Parliament, which represents it.

Master *Prinne* in the same lease affirms , and truly , that the Kings assent is generally requisite to passe Lawes and ratifie them ; the

King

King is the Head of the Kingdome and Parliament, how then can a Body act without a Head?

A major part of a Corporation bindes, therefore the major part in 906. Parliament, and so of by Lawes.

The Corporation is so bound, *ei Sol.* either by the Kings Charters, or by prescription, which sometimes had the Kings concession; but prescription, and Law, and practise, alwayes left the King a negative voice.

The King cannot alter the Bills presented to him by both Houles, *1006.* g°.

True, but the King may refuse *Sol.* them.

Acts of Parliament and Lawes ministred in the Raignes of Usurpers, bind rightfull Kings, *1106.* g°.

What is this to prove the two hou- *Sol.* ses power only, which is the question?

A King *de facto* must be obeyed by them who submitted to him, and they are his Subjects by their submission, and not Subjects *de facto* to the true King, and such being Traytours and Rebels to the Regent King (having renounced the true King) when the lawfull King is restored, may be punished by him for their Treason against the Usurper: But heere is a King still in both cases, and the proceedings

ceedings at Law holds, the Judges having their Patents from the being Kings, in the Raignes of Kings, *de facto* or *de jure*, for all Kings are bound, and sworne to observe the Lawes.

12 Ob.

A King dies without Heire, is an Infant, *non compos mentis* &c. the two Houses may establish Lawes, &c.

Sol.

There is no *Inter-regnum* in England, as appears by all our Bookes of Law; and therefore the dying without Heire is a vaine supposition, and by their principle he is considerable in his politick capacity, which cannot dye at all: The Protector, assisted by the Councell of the King at Law, his twelve Judges, the Councell of State, his Attorney, Solicitor, and two Sergeants at Law, his twelve Masters of the Chancery, hath in the Kings behalfe, and ever had a Negative Voice; but what is this to the present question? Wee have a King of full age, of great wisdom and judgement; the power of the two Houses in such a case to be over the King, cannot be shewne.

13 Ob.

The King cannot dissent to publique and necessary Bills for the common good, &c.

Sol.

Nor ever did good King; but who shall

shall be judge, whether they be publique and necessary? The *major* part in either of the Houses, for passing of Bills so pretended, may be but one or two voyces, or very few, and perhaps of no judicious men; is it not then fitter or more agreeable to reason, that his Majesty and Councell of State, his twelve Judges, his Sergeants, Attorney, and Solicitor, twelve Masters of the Chancery, should judge of the conveniency and benefit of such Bills for the publick good, rather than a *minor*, (of which sort there may be in the Houses) or a weak man, or a few, who oftentimes carry it by making the *major* part, which involves the consent of all? Let reason determine.

The Kings of *England*, have been ¹⁴⁰² elective; and the King by his Coronation Oath is bound to maintaine *justas leges & consuetudines quas vulgus elegerit*, 8°.

Popery hath beene in the king. *Sol.* dome, and therefore to continue it still, will not be taken for a good argument; when thinges are settled for many ages, to looke back to times of confusion is to destroy all repose: The Act of Parliament, of the 1. of *K. James*, Chapter the first, and all our
C 3 extant

extant Lawes say, that the Kings Office is an heritage inherent in the blood of our Kings, and their birth-right.

1 El. 4. c. 1.

And Usurpers that come in by the consent of the people, are Kings *de facto*, but not *de jure*, as appears by the Acts of Parliament declaring them so; and by all our Law books and the fundamentall constitution of the Land, Regall power is hereditary and not elective.

1 Hen. 7.

For the words (*vulgus elegerit*) if *vulgus* be applyed to the House of Commons, they of themselves can make no Lawes: The Peeres were never yet termed *vulgus*; but allowing they be so called, the Lawes to be made be just, and who is fit to judge thereof, is before made evident.

13 Ob.

Customes cannot referre to future time, and both are coupled, Lawes and Customes.

Princes have beene deposed, and may be by the two Houses, g.

Sol.

The Deposers were Traytours, as appears by the resolution of all the Judges of England; Coke, Chap. Treason, in the second part of the Institutes: And never was King deposed but in tumultuous and mad times, and by the power of Armies, and

and they who were to be the succeeding Kings in the head of them, as *Edward* the third, and *Henry* the fourth.

The appeale to the Parliament for 1606.
errors in judgements in all Courts
is frequent, g^o.

This is onely to the House of *Sol.*
Lords, and that is not the Parliam-
ment; the House of Commons have
nothing to doe therewith; and in the
House of Peeres, if a Writ of Errour
be brought to reverse any judgement,
there is first a petition to the King for
the allowance thereof, and the rea-
son of the Law in this case is, for that
the Judges of the Land all of them,
the Kings-Councell, and twelve Mas-
ters of the Chancery assist there, by
whose advice erroneous judgements
are redressed.

The Parliaments have determined 1706.
of the rights of Kings, as in *Henry*
the sixts time, and others, and Parlia-
ments have bound the succession of
Kings, as appears by the Statute of
the thirteenth of *Queene Elizabeth*,
Chapter the first: And the descent of
the Crown is guided rather by a Par-
liamentary Title then by Common
Law, g^o.

If this objection be true, that the *Sol.*
C 4 Title

Title to the Crowne is by Parliament, then wee had no Usurpers, for they all had Parliaments to back them; yea, **Richard** the third, that Monster. All our Bookes of Law say they have the Crowne by descent, and the Statutes of the Land declare, that they have the same by inherent birth-right. And the Statute of the thirteenth of **Elizabeth**, the first Chapter, was made to secure **Queene Elizabeth** against the **Dauncie of Scots**, then in the kingdome, clayming the Crowne of **England**, and having many adherents: And that Statute to that end affirmes no such power in the two Houses (which is the question) but in **Queene Elizabeth**, and the two Houses, which makes against the pretence of this time.

Master Wynne, fol. 104 of his booke, intituled, the **Parliaments supreme power**, &c. Objecting the Statute of the first of **Queene Elizabeth**, and his owne Oath, that the King is the onely supreme Governour of this Realme; Answers, The Parliament is the supreme power, and the King supreme Governour: And yet there he allowes him a **Negative Voyce**; and fol. 107, confesseth that

that Acts of Parliament transferred the Crowne from the right Heires at Common-law, to others who had no good Title, then the Parliamentary Title makes not the King, so powerfull is truth, that it escapes from a man unawares: To make a distinction betweene supreme Governour, and supreme power, is very strange, for who can governe without power?

The King assembles the Parliament by his Writ, adjournes, prorogues, and dissolves the Parliament, by the law at his pleasure, as is evident by constant practise, the House of Commons never sate after an adjournment of the Parliament by the Kings command: Where is the supreme power?

*Vide Speed.
645. 4 par.
Instit. 17. &
2.*

The King by his Oath, is bound to deny no man right, much lesse the Parliament, to agree to all just and necessary lawes proposed by them to the King. This is the substance of the discourse against the Kings Negative Voyce.

The King is so bound as is set downe in the Objection; but who shall judge whether the bill proposed be just and necessary? For all that they doe propose are so pretended and

Sol.

carried in either House, sometimes by one or two Voyces; or some few as aforesaid, and certainly as hath beene shewen, the King, his Councell of State, his Judges, Sargeants, Attorney, Solicitor, and twelve Masters of the Chancery can better judge of them, then two or three, or few more.

Mr. Wynne fol. 45. In his booke of the Parliaments interest to nominate Privy Councillors, calleth the opinion of the **Spencers** to divide the Person of the King from his Crowne, a strange opinion, and cites **Calvins Case**, but leaves out the conclusions therein mentioned, fol. 11. Master Wynne saith there, But let this opinion be what it will; without the Kings Grace and Pardon it will go very farre, and two Acts of Parliament there mentioned are beyond an opinion: And in his booke of the opening of the Great Seale, fol. 17. The Parliament hath no jurisdiction to use the Great Seale for Pardons Generall or Particular. Where is the supreme power then?

19 07.

Mr. Wynnes (opening of the Seale) pag. 19. saith, the Noblemen and State, the day after the Funerall of **King Henry the third** (King Edward

Seard

Edward the first his sonne being in the Holy Land) made a new Great Scale, and Keepers of the same ; And in **Henry** the sixts time , in the first yeere of his Reigne , the like was done in Parliament.

A jacta, ad jus, is no good Argument, for that in **Edward** the firsts time, it was no Parliament, for King **Henry** the third was dead, which dissolved the Parliament , if called in his time, and it could be no Parliament of **Edward** the firsts time, for no Writ issued to summon a Parliament in his Name , nor could issue but under that New Scale , it was so suddaine'y done after **Henry** the thirds death, King **Edward** the first being then in the Holy Land, it was the first yeere of his Reigne , and no Parliament was held that yeere, nor the second yeere of his Reigne : The first Parliament that was in his Reigne , was in the third yeere of his Reigne , as appeares by the printed Acts : Also the making of that Scale was by some Lords then present ; What hand had the Commons in it ? Concerning the Scale made in **Henry** the sixths time , the Protector was Vice-Roy according to the course of law, and so the making of

of that Seale was by the Protector in the Kings name, and that Protector, **Humphrey** Duke of **Gloucester**, as Protector, in the Kings Name summoned that Parliament, and was Protector made by the Lords, and not in Parliament, as appeareth plainly, for that Parliament was in the first of **Henry** the sixth, and the first holden in his time, and power given by Commission to the said Duke, then Protector, to summon that Parliament, **Wynde**, *ibid. fol. 19.* But the new counterfeit Seale was made when the King was at **Oxford**, in his owne kingdome, and not in the holy Land.

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Mr. Wynde in his booke of the two Houses power to impose Taxes, restraines Malignants against any *Habeas Corpus*, &c. saith, that the Parliament is above *Magna Charta*, and *fol. 15. ibid.* The Parliament hath power over *Magna Charta* to repeale the same when there is Cause.

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This Argument supposeth that they have the Kings power, which hath appeared formerly they have not: But suppose they had, *Magna Charta* containes many Morall Laws, which by the Law of the Land a Parliament cannot alter, 21 *H. 7. 2.*

D and Student, 2 Dialogue. For example, it saith *cap. 18.* Justice shall not be sold, delayed, nor denyed to any man ; but by this Argument the Parliament may make Law to delay, deny, and to sell Justice, which surely is a very ill position to maintaine.

What they would have , doth now by the Propositions sent to **Newcastle** to his Majesty appeare, whereby they would have him divest himselfe, and settle in them all his Kingly power by Sea and Land , and of themselves to have power , without him , to lay upon the people of this Land what taxes they thinke meet, to abolish the Common-prayer-booke, to abolish Episcopacie, and to introduce a Church Government not yet agreed , but such as they shall agree on.

His Majesty finding a prevailing party in both Houses to steere this course , and being chased away with Tumulis from **London** , leaves the Houses for these Reasons, (*viz.*)

First , because to alter the Government for Religion, is against the Kings Oath.

Secondly, against their Oaths: For every of them hath sworne in this Parliament , That His Majesty is

is the only supreme Governour in all Causes Ecclesiasticall and over all persons.

Thirdly, this course is against *Magna Charta*, the 1. chap. and the last. *Salve fiat Episcopis omnes libertates sue*, Confirmed by thirty two Acts of Parliament: and in the two and fortieth of **Edward** the third, the first Chapter enacts, if any Statute be made to the contrary, it shall be holden for none: and so it is for judgments at Law, in the 25 of **Edward** the 1. chap. 1. 2. The Great Charter is declared to be the Common Law of the Land.

Fourthly, they endeavour to take away by their Propositions, the Government of **Bishops**, which is as ancient as Christianity in this Land, and the **Booke of Common-prayer** settled by five Acts of Parliament, and compiled by the **Reformers and Martyrs**, and practised in the time of **four Princes**.

Fifthly, these Propositions taking away from his Majesty all his power by **Land and Sea**, rob him of that which all his Ancestors, Kings of this Realme, have enjoyed: That enjoyment and usage makes the **Law**, and a Right by the same to his Majesty.

They

They are against their owne Protestation made this Parliament, (v:z) to maintain his Royal Person, Honour, and Estate ; They are against their Covenant, which doth say, that they will not diminish his just power and Greatnesse.

For these reasons his Majesty hath left them, and as is believed, will refuse to agree to the said Propositions, as by the fundamentall Law of the Land he may (having a **Negative Voice**) to any Bills proposed.

The result of all is upon the whole matter : That the King thus leaving of the Houses, and his deniall to passe the said propositions, are so far from making him a Tyrant, or not in a condition to governe, at the present ; that thereby he is rendred a **just, Magnanimous, and pious Prince** : so that by this it appears clearly to whom the **Miseries** of these times are to be imputed. The remedy for all, is, an Act of Oblivion, and a Generall pardon.

God save the King.

**DAVID JENKINS, now
Prisoner in the Tower.**

28. April, 1647.

*The Vindication of
Iudge Ienkins Prisoner in the Tower, the
29 of Apill, 1647.*

I Was convened upon Saturday the 10 of this moneth of Aprill before a Committee of the House of Commons, wherein Master Corbet had the Chaire ; and I was there to be examined upon some questions then to be propounded to me ; to which questions I refused to give any other answer then that which was set downe in a paper I then delivered to the said M. Corbet, which followeth in these words:

Gentlemen, I stand committed by the House of Commons for High Treason, for not acknowledging, nor obeying the power of the two Houses, by adhering to the King in this warre. I deny this to be Treason, for the supreme and onely power by the Lawes of this Land, is in the King: If I should submit to any examination derived from your power, which by the Negative Oath stands in opposition to the Kings Power. I should

should confesse the power to be in you, and so condemne my selfe, for a Traitor, which I neither ought nor will doe.

I am sworne to obey the King, and the Lawes of the Land; you have not power to examine me by those Lawes, but by the Kings Writ, Warrant, or Commission; if you can produce either thereof, I will answer the questions you shall propound; other wise I cannot answer thereto, without the breach of my Oath, and the violation of the Lawes, which I will not doe to save my life.

You your selves, all of you this Parliament, have sworne that the King is our onely and supream Governour; your Protestation, your Vow and Covenant, your solemne League and Covenant, your Declarations, all of them published to the Kingdome, that your scope is the maintenance of the Lawes; those Lawes are and must be derived to us, and enlivened by the onely supream Governour, the Fountaine of Justice, and the life of the Law, the King. The Parliaments are called by his Writs, the Judges sit by his Warrants,

tents, so of all other Officers, the Cities and Townes corporate, governed by the Kings Charters; and therefore since by the Law I cannot be examined by you, without a power derived by his Majesty, I neither can, nor will, nor ought you to examine me upon any questions. But if as private Gentlemen, you shall be pleased to aske me any questions, I shall really and truly answer every such question, as you shall demand.

April 10 1647.

David Ilenkin.

This Paper hath beene mis-represented to the good people of this City by a printed one, styling it my Recantation, which I owne not; and besides is in it selfe repugnant (just like these times) the Body falls out with the Head. To vindicate my selfe from that Recantation, and to publish to the world the reality of the Paper then delivered to Mr. Corbet, and the matter therein contained, I have published this ensuing discourse.

No person who hath committed Treason, Murder, or Felony, hath any assurance at all for so much

as one houre of life, Lands or Goods, without the Kings gracions pardon, 27 Hen. 8. cap. 24.

The King is not virtually in the two Houses at Westminster, whereby they may give any assurance at all to any person, in any thing, for any such offence.

1. The House of Commons have declared to the Kingdome in their Declaration of the 28 of November last, to the Scots Papers, p. 8. That the King at this time is not in a condition to governe. No person or thing can derive a vertue to other men, or things, which it selfe hath not; and therefore it is impossible that they should have a vertue from the King to govern, which they declare he hath not himselfe to give.

2. The Law of the Land is, That ^{5 Elizab. cap. 1.} no person in any Parliament hath a voyce in the House of Commons, but that he stand a person to all intents and purposes as if he had never beene elected or returned, if before he sit in the House, he take not his Oath upon the holy Evangelists, that the Kings Majesty is the onely and supream Governour over all persons in all Causes. All the Members of the said House have taken

taken it, and at all times as they are returned doe take it; otherwise they have no colour to intermeddle with the publick Affaires. How doth this Solemne and Legall Oath agree with their said Declaration, **That the King is in no condition to governe** By the one it is sworne, he is the only supream Governour; by the other, that he is not in a condition to governe.

3. The Oath is not, that the King was, or ought to be, or had beene, before he was seduced by ill Councell, our only and supream Governour in all Causes, over all persons; but in the present tense, **that he is our only and supream Governour**, at this present, in all Causes and over all persons. So they the same persons swear one thing, and declare to the Kingdome the contrary of the same thing, at the same time, in that which concerneth the weale of all this Nation.

4. The Ministers in the Pulpits doe not say, what they swear in the House of Commons. Who ever heard sithence this unnaturall Warre, any of their Presbyters attribute that to his Majesty which they swear? The reason is, their Oath is to be it ~~Testimonie~~ **Testimonie** amongst themselves: that which their

their Ministers pray and preach, goes amongst the people. To tell the people that the King is now their only and supream Governour in all Causes, is contrary to that the Houses doe now practise, and to all they act and maintaine. They, ~~the two Houses~~ **forsooth**, are the only and supream Governours in default of the King, for that he hath left his great Councell, and will not come to them, and yet the King desires to come, but they will not suffer him, but keepe him prisoner at **Holmby**: so well doe their Actions and Oaths agree.

5. They sweare now, King **Charles** is their only and supream Governor; but with a resolution at the time of the Oath taking, and before and after, that he shall not be only or supream Governour, or only and supream, but not any Governour at all: For there is no point of Government, but for some yeares past they have taken to themselves, and used his name only, to abuse and deceive the people.

6. That this virtuell power is a meere fiction, their Propositions sent to **Oxford**, to **Besowcastle**, to be signed by the King, doe prove it so. What needes this adoe, if they have the virtuell Power with them at **Westminster**?

7. To

7. To affirme that the Kings power (which is the vertue they talke of) is separable from his person is High Treason by the Law of the Land; which is so declared by that learned man of the Law, Sir **Edward Cooke**; so much magnified by this present Parliament, who in the 7 part of his Reports in **Calving** case, fol. 11. saith thus. In the reigne of **Edward the second**, the **Spencers**, the father and Sonne, to cover the Treason hatched in their hearts, invented this damnable and damned opinion, that homage and Oath of Allegiance was moze by reason of the Kings Crowne, (that is of his politick capacity) then by reason of the person of the King, upon which opinion they inferred three execrable and detestable consequences. 1. If the King doe not demean himselfe by reason in the right of his Crowne, his Lieges are bound by Oath to remove the King. 2. Seeing that the King could not be reformed by suite of Law, that ought to be done per asperum that is by force. 3. That his Lieges be bound to governe in ayde of him, and in default of him; all which were condemned by two Parliaments, one

in the raigne of **Edw. 2.** called *exili-
um Hugonis le Spencer*; and the other
in *Anno 1. Edw. 3. cap. 2.*

And that the natural body and poli-
tick makes one indivisible body, & that
these two bodies incorporate in one
person make one body and not divers,
is resolved as the law of **Eng. 4. Eliz.**
Plowden Cō fol. 213. by Sir **Cobert**
Catlin, L. Chiefe Justice of Eng. Sir
James Dier, L. Chief Justice of the
Common pleas, the **L. Sanders**, L.
Chief Baron of the **Exchequer**, & by
the rest of the Judges, viz. Justice **Ba-
stall**, Justice **Browne**, Justice **Cop-
bet**, Justice **Weston**, Baron **Frebill**,
Carns and **Powtrel**, Sergeant to
the Queene, **Gerrard** Atturney Gene-
rall; **Carell** Atturney of the **Dutchy**;
Plowden the learnedest man of that
age, in the knowledge of the Law,
and Customes of the Realme.

8. The Law in all ages without a-
ny controversie is and hath been: that
no Act of Parliament binds the
Subjects of this Land without
the assent of the King, either for
Person, Lands, Goods, or fame.
No man can shew any sillable, letter,
or line to the contrary in the bookes
of the Law, or printed Acts of Parli-
ament, in any age in this Land: If
the

9. Hen. 3
Magna
Charta. So in
every Age
till this day,
and in every
Kings time,
as appears
by the Acts
in Print,

*a part of the
Instit. Scit.*

*234. in fine
where many
of the Law-
Bookes are
cited.*

7 Hen. 7. 14.

11. of Hen.

7. 20.

3 Hen. 4. Cap.

22.

4 pars. Instit.

42.

Mr. Pryn in

his Treatise

of the great

Seal. (Fol. 17.

of Hen. 8.

667. 24.

the virtuall power be in the Houses, there needes no assent of the Kings. The stiles of the Acts printed from 9 Hen. 3. to 1 Hen. 7. were either, **The King ordaines at his Parliamt.**, &c. or **the King ordaineth by the advice of his Prelates and Barons**, and at the humble Petition of the Commons, &c. In Hen. 7. his time the stile altered, and hath since continued thus; **It is ordained by the Kings Majesty, and the Lords spirituall and temporall, and Commons in this present Parliament assembled**; So that alwayes the Assent of the King giveth the life to all, as the soule to the body; and therefore our Law-bookes call the King, the **Fountaine of Justice, and the life of the Law.**

9. Mercy as well as Justice belongs by the Law of the Land onely to the King. This is confessed by Mr. Pryn, and it is so without any question: The King can onely pardon, and never more cause to have sufficient pardons then in such troublesome times as these, and God send us pardons and peace: None can give any pardon, but the King by the Law of the Land: **The whole and sole power of pardoning Treasons and**

and Felonies belongs to the King
are the words of the Law, and it is a
delusion to take it from any other and
utterly invalid. 27. Hen. 8. cap. 24.

10. **Queene Elizabeth** summoned her first Parliament ; to be held
the 23 of Jan. in the first yeare of her
Majesties Raigne ; The Lords and
Commons assembled by force of the
same Writ, the 21 day the Queen fell
sick and could not appeare in her per-
son in Parliament that day, and there-
fore prorogued it untill the 25 of the
same Month of January : **Resolved**
by all the Judges of England, that
the Parliament began not the day ^{3 of Eliz. D.}
of the retorne of the Writ, viz. the ^{or 29.}
23 of January, when the Lords
and Commons appeared, but the
25 of the said moneth when the
Queene came in person ; which
sheweth evidently that this virtuall
presence is a meere deluding fiction
that hath no ground in Law ; reason,
or sence : They have the King now a
prisoner at **Holmby**, with guards u-
pon him, and yet they governe by the
virtuall power of their Prisoner.
These are some few of the causes and
reasons which moved me to deliver
that paper to Mr. **Corbet**, which I
am ready to justifie with my life, and

D

should

Should hold it a great honour to dye
for the honourable, and holy Laws of
the Land : that which will save this
Land from destruction, is an Act of
Oblivion, and his Majesty's gra-
tious generall pardon, the Sould-
diers their Treasures, and every
man his owne, and truch and
Peace established in the Land, and
a favourable regard had to the sa-
tisfaction of tender consciences.

April 29. 1647.

David Jenkins.

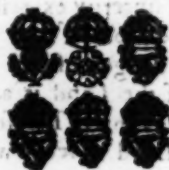
THE
ARMIES
INDEMNITY,

With Addition;

Together,

With a Declaration, shewing how
every Subject of *England* ought to
be tried for Treasons, Felonies,
and all other Capitall Crimes, as
it is set downe in the Lawes
of the LAND.

By *David Jenkins*, now Prisoner in the
Tower of LONDON.



Printed in the yeare, 1648.



The Armies Indemnity, &c.

VPon the publishing of the Ordinance of the 22 of May last, for the Indemnity of the Army, certaine Gentlemen well affected to the peace of the Kingdome, and safety of the Army, desired me to set downe in writing, whether by the Law of the Land, the said Ordinance did secure them from danger, as to the matters therein mentioned: For whose satisfaction in a businesse wherein the lives and fortunes of so many men were concerned, and the peace of the Kingdome involved, I conceived I was bound in duty and conscience, faithfully and truly to set downe what the Law of the Land therein is, which accordingly I have with all sincerity expressed in this following discourse.

25. Ed. 3. c.

31.

2 Ri. 2. c. 1.

3 Hen. 4. c.

10.

1 and 2 Phi.

and May,

s. 10.

The danger of the Army by the Law of the Land is apparent to all men; It is high Treason by the Law of the Land to leavy war against the King, to compass or imagine his death, or the death of his Queene, or

of

of his eldest Sonne, to counterfeit his Money, or his great Seale; They are the very words of the Law: Other Treasons then are specified in in that Act, are declared to be no Treasons untill the King and his Parliament shall declare otherwise, they are the very words of the Law. King and Commons, King and Lords, Commons and Lords, cannot declare any other thing to be Treason, then there is declared; as appeares by the Lord **Coke**, in the places cited in the Margin; A Law-booke published by order of the House of Commons this Parliament, as appeares in the last lease of the 2. part of the Institutes, published likewise by their Order.

3 pars instit. pag 23. & 2 pars instit. pag 47. 48. and 4. pars instit. p. 23. 48. 29. 3 pars instit. cap. Treason, p. 9. 10. and 13.

The Resolutions of all the Judges of England, upon the said Statute of the 25 **Ed. 3.** (as appeares in the said third part of the Institutes, **Chap. High-Treason**) have been, that to imprison the King untill he agree to certaine demands is High-Treason; to seize his Ports, Forts, Magazine for War, are High-Treason; to alter the Lawes is High-Treason.

Mr. S. John the Solicitor in his speech upon the arraignment of the Earle of Strafford, Printed by order of the House of Commons. pag. 7. 13.

The word King in the Statute of 25 **Ed. 3. c. p. 2.** must be understood of the Kings naturall person; for that

D 3 person

person can onely dye, have a Wife, have a Son, or be imprisoned.

4 Pers in flit.

6. Parl. p. 25.

The Priviledge of Parliament protects no man from treason or felony, howbeit he be a Member; much lesse can they protect others: Those who cannot protect themselves, have no colour to make Ordinances to protect others who are no Members.

11 H. 7. c. 1.

The Statute of 11 Hen. 7. cap. 1. doth by expresse words free all persons who adhere to the King.

Stanford. L.

2. fol. 99.

18 Ed 3. Stat.

utes at

large 144.

20. Ed. 3. r.

1.

11. Ric. 2. c.

10.

4 Pers in flit.

Par. 23. 48.

29.

The Army by an Act of Indemnity free themselves from all those dangers, which an Ordinance can no more doe then repeale all the Lawes of the Land, the whole and sole power by Law to pardon all treasons felonies, &c. being solely and wholly in the King, as is cleared by the Statute of 27 H. 8. c. 24. and the Law of the Land in all times.

Having shewed the danger of the Army by the Law of the Land, next consider the Ordinance of the Lords and Commons published the 22 of May last for their Indemnity; by the ensuing discourse it doth appeare they have no Indemnity at all thereby.

The Indemnity proposed by the Ordinance, is for any Act done by the authority

authority of the Parl. or for the service or benefit thereof; and that the Judges and all other Ministers of Justice shall allow thereof.

This Ordinance cannot secure the Army for these reasons.

1. Their Judges are sworne to doe justice according to the Law of the Land, and therefore the Judges must be forsworne men if they obey it; because an Ordinance of both Houses is no Law of the Land, and no man can believe they will perjure themselves so palpably and visibly in the eye of the World.

2. All trials for treasons, felonies, robberies, and such like capitall offences, are by the Law of the Land to be by indictment of a Jury appoynted out of the Neighbourhood where the offence was done. There is no common Jury-man but understands what the Law is in these cases as well as the best Lawyers; and the Law makes the Jury Judges of the fact, whereby the souldier is left to their mercy whom he hath offended (as some of them have lately had woful experience and thereupon doe rightly apprehend their danger) Now no man can think that the Jurors wil perjure themselves to acquit the souldiers for robbing and

3 *Pars instit.*

Pag. 22.

2 *Pars instit.*

47 48.

1 *Pars instit.*

193.

Princes case

8, reports.

Magna Charta cap. 29.

25. Ed. 3. c. 4.

28. E. 3. c. 3.

37. Ed. 3. c. 8.

42. E. 3. c. 3.

Declaration of the Army presented at Walden, and printed by the appointment of the Officers subscribed,

plundering of the Countries ; and thereby utterly destroy their owne Rights and Properties.

3. If the Judges conceive (as they may) that the taking of other mens horses or goods, is not by the Authority of Parliament, or for the service and benefit thereof, the soldier dyes for it; they may say to steale or rob any man of his goods is not for the Parliaments service but against it, which was alwayes the sence of the people, and doubtlesse the Jurors will not thinke otherwise.

4. This Ordinance is restrained to the authority, service or benefit of the Parl. The Lords and Commons make no more a Parliament by the law of the Land then a body without a head makes a man; for a Parliament is a body composed of a King their head; the Lords and Commons the Members. All three together make one body, and that is the Parl. and no other; and the Judges may, ought, and I believe wil according to their oaths proceed as not bound at all by this ordinance. For it is restrained to the authority of Parl. service or benefit thereof, whereas the two Houses are not the Parl. but only parts thereof, and by the abuse and misunderstanding

4 Pars instit.

pag. 1.

3 pars instit.

pag. 22.

1. pars instit.

pag. 1.

28. H. 8. fol.

11.

Dier 38. H. 8. fol. 60.

11. H. 7. 20.

1. pars instit.

1591. Prince's case

8 Reports.

ding of this word **Parliament**, they have miserably deceived the people.

5. This Ordinance is against their Ordinance which expressly prohibits plundering, and so there is one Ordinance against another, whereby their Judges have an out let to proceed on the one or the other, and thereby the Army hath no manner of security.

6. The word Parliament is a French word (howbeit such Assemblies were before the Norman Conquest heere) and signifies in that language to consult and treat; that is the sense of the word **Parler** in the French Tongue.

The Writ whereby the two Houses are assembled, which is called the writ of Summons of Parliament, at all times, and at this Parliament used, and which is the warrant, ground and foundation of their meeting, is for the Lords of the House of Peeres, the Judges and Kings Counsell to consult and treat with the King (that is the **Parler**) of great concernments, touching 1. the King, secondly, the defence of his Kingdome, thirdly, the defence of the Church of England. It cannot be a Parliament that will not parle with their King, but keepe him in prison, and not suffer him to come to them and parle, and therefore the

28. Aug.

1642.

Col. of Ord.
first part.

365. 392.

605. severall
Ordinances

1. *Paris insin.*

109.

1. *Paris insin.*

110.

4. *Paris p. 49.*

Law, and sense, and reason, informing every man that is no manner of Parliament (the King with whom they should parle, being to restrained that they will not parle with him) the Army hath no manner of security by this Ordinance; for their indemnification referres to that which is not in being untill the King be at Liberty.

The Common Soldiers second Apology.
6. Grievances of the Army published 15. May last.
Three grievances of Col. Riche's Regiment.

7. It is more then Probable that their Judges before the last Circuite had instructions to the effect of this Ordinance; but they the Judges making conscience of their Oath, laid aside the said instructions, and oughty and may, and it is believed will no more regard this Ordinance, then the said instructions: What was done in the last circuit, the Army well knows, touching many of their fellow-Souldiers.

8. The Houses in their first Proposition to his Majesty for a safe and well-grounded Peace, sent to Newcastle to desire a pardon from his Majesty for themselves: they who desire a pardon, cannot grant a pardon (common reason dictates this to every man) and therefore that the Army should accept an Indemnity for them, who seek it for themselves, or should conceive it of any manner of force, is a fancy: so that no man in the whole Army but may apprehend, that it is vaine and a meere delusion.

9. His Majesty by his grations message of
the

the 12. of May last, hath offered an Act of Oblivion, and a generall pardon to all his people, this done the Law doth indemnifie the Army (without all manner of scruple) for any thing that hath been done; for it is an Act of Parliament, when the King and two Houses concur, and binds all men. There is no safety by the Ordinance; There is safety by an act of Parliament: And will not reasonable men preferre that which is safe before that which is unsafe.

10. His Majesty by his said Letter agrees to pay the arrears of the Army; I am sure that it is a Publick Debt, and the chiefest and the first that by the two Houses should be paid, and before any Dividend or gratuities bestowed among themselves; for their blood, limbes, and lives have put and kept the both Houses at rest in the power they have: So by this concurrence of his Majesty for your indemnity, and for your arrears, the Army have not an Ordinance, or the Publick Faith, but the Law of the Land to make sure unto them their Indemnity for all Acts, and for their Arrears, and therewith also bring peace to the Land.

11. The Kingdome and people generally desire these things. To such an Army, just and reasonable things must not be denied; the things formerly proposed are most just and reasonable, you may have them if you will; if you will not, you render this Kingdome miserable, wherein you will have your shares of miseries: The head and the body are such an incorporation as cannot be dissolved without the destruction of both.

The Additional Ordinance of both Houses passed the fifth of June instant for the fuller indemnity of the Army, makes nothing at all to the matter. 1. For that extends not

Mr. Pym's
Speech against the
Bale of
Strafford p.
16.

Sixt considerations
printed by
the command of the
House of
Commons.

to Felony, Homicide, Burglary, Robbery, or any other capitall crime, which is the maine businesse insisted upon, and most concerneth the Souldiers security.

12. The both Houses in the said additionall Ordinance, say, that it is expedient that all offences be pardoned and put in oblivion pardon & oblivion cannot be understood to be for a time, but for ever; and they themselves confesse, that an Ordinance is not binding but *pro tempore*, which with the most advantageous interpretation can be but a reprieve or delay of the execution of the Law, and therefore that cannot pardon or put in oblivion by their owne shewing.

27. H. 8. c.
24.

But the Law of the Land is, (and so it hath constantly been practised in all times) that no persons of what estate soever, have any power to pardon treason, felony, or any other offences but the King only, who hath the sole and whole power to pardon all such crimes whatsoever. And in the same manner an Ordinance is of no Authority at all to take away the right of private mens actions, by any evidence it can give; in truth all the evidence that this Ordinance will give is, that it records to posterity nothing but a lawlesse and distempered time.

For remedy thereof I say againe, it is a certaine truth, this Kingdome without an act of Oblivion, and a generall pardon, and the payment of Souldiers arreares, and a meet regard had to tender consciences, will unavoidably be ruined.

June 10. 1647.

DAVID JENKINS
Prisoner in the Tower of
LONDON.

Sundry

Sundry Acts of Parliament
 mentioneed and cited in the
 Armies Indemnities: set forth
 in words at large for the
 better satisfaction of such
 as desire to bee rightly
 informed.

25. Edw. Chap. 2.

*A Declaration what offences shall
 be adjudged Treason.*

Whereas divers opi-
 nions have been be-
 fore this time, in
 what case Treason
 shall be said, and in what not:
 The King at the request of the
 Lords and of the Commons
 hath made a Declaration in the
 manner as hereafter followeth:

¶

That

That is to say, When a man doth compasse, or imagine the death of our Lord the King, or of our Lady the Quæen, or of the eldest Sonne and Heire: or do violate the Kings compani- on, or the Kings eldest daughter unmarried, or the wife of the Kings eldest Son and Heire; or if a man doe levy War against the Lord our King in his Realme, or be adherent to the Kings enemies in his Realm, giving to them aid and comfort in the Realm, or else where, and thereof be probably attainted of open deed by people of their con- dition: And if a man counter- feit the Kings great or privie Seal, or his mony: and if any man bring false mony into this realm, counterfeited to þe mony of England, and the mony called Lusburgh, or otherlike to þe said mony of England, &c.



11. Hen. 7. Chap. 1.

None that shall attend upon the King, and doe him true service, shall be vttaunted or forfeit any thing.

THe King our Soueraign Lord calling to remembrance the duty of Allegiance of his Subjects of this his Realm, and that they by reason of the same are bound to serue their Prince and Soberaigne Lord for the time being in his Warrs, for the defence of him and the Land, against every rebellion, power, and might raised, reared against him, and with him to enter and abide in seruice in battell, if case so require, and that for the same seruice what fortune ever fall by chance in the same battell against the minde and will of the Prince (as in
 C. 2 this

this Land sometime passed hath
 been (seen) that is not reasonable,
 but against all lawes, reason and
 good conscience, that the said sub-
 jects going with their Soue-
 reign Lord in Wars, attending
 upon him in his person, or being
 in other places by his commande-
 ment within this Land or with-
 out, any thing should lose or for-
 feit, for doing their duty or ser-
 vice of Allegiance. It be there-
 fore ordained, enacted, and esta-
 blished by the King our Soue-
 reign, by the advice & assent of
 his Lords Spirituall and Tem-
 porall and the Commons in this
 present Parliament assembled,
 and by authority of the same, that
 from henceforth no manner of
 person or persons whatsoever he
 or they be, that attend upon the
 King and Soueraign Lord of
 this land for the time being, in
 his person, and do him true and
 faithful service of Allegiance in
 the same, or be in other places by
 his commandement in his
 wars within this land; or with-
 out, that for the said deed and
 true

true duty of Allegiance hee or
 they be in no wise convict or at-
 taint of high treason, nor of other
 other offences for that cause, by
 Act of Parliament, or otherwise
 by any processe of law whereby
 he or any of them shall lose or for-
 feitt life, lands, tenement's, rents,
 possessions, hereditaments,
 goods, chattels, or any other
 things, but to be for that deed and
 service utterly discharged of any
 other things, but to be for that
 deed and service utterly dischar-
 ged of any vexation, trouble, or
 losse. And if any Act or Acts, or
 other processe of the Law here-
 after thereupon for the same,
 happen to be made contrary to
 this Ordinance, that then that
 Act or Acts, or other processe of
 Law, whatsoever they shall be,
 stand and be utterly void. Pro-
 vided alwaies, that no per-
 son or persons shall take any
 benefit or advantage by this
 Act, which shall hereafter de-
 cline from his or their said Al-
 legiance.

Cap. 24. In the Statute of 27.


H. 8. It is enacted, that no person or persons of what estate or degree soever they be of, shall haue any power or authority to pardon or remit any treason, murders man-slaughters, or any kind of Fellonies, &c. but that the King shall haue the sole and whole power and authority thereof united and knit to the Imperiall Crowne, as of right it appertaineth, &c. And in the same Statute it is enacted further, That none shall haue power, of what estate, degree, or condition soever they be, to make Iustices of Eyre, Iustices of Assize, Iustices of Peace, &c. but al such Officers & Ministers shal be made by Letters patents vnder the Kings great Seal in the name and by the authority of the King and his Heires and Successors Kings of this Realm.

In the first year of Queen Mary, and the first Chapter, It is enacted by the Quēn, with the consent of the Lords and Commons, That no deed or offence,
by

by act of Parliament made treason, shall bee taken, deemed, or adjudged to bee high Treason, but only such as be declared and expressed to be Treason by the Act of Parliament made 25. Ed. cap. 2. before mentioned.

E 4

A



A Declaration of M^r. *David*
Fenkins, now Prisoner in the
 Tower of *London*, one of His
 Majesties Judges in *Wales*, for
 tryalls of Treasons, Murthers,
 Felonies, and all other capi-
 tall crimes, that they ought
 only to be by **juries, &**
 not otherwise, unless
 it bee by Act of
 Parliament.

THe Common Law of this
 Land is, That every free-
 man is subject to a tryall
 by bill of Attainder in
 Parliament, wherein His
 Majesty and both Houses must neces-
 sarily concur, for that tryall and at-
 tainder is an **Act of Parliament**
 to which all men are subject to.

a Mag.
 Chart. 29.
 2 part. in-
 stit. fol. 28.
 29. 46. 48. 49
 50. compo-

a No man shall otherwise be de-
 stroyed, &c. but by the lawfull judge-
 ment of his Peers, or by the common
 Law of the Land. Peers to Noble-
 men are Noblemen, Peers to the
 Comons are Knights, Gen. &c Judge-
 ment

ment of Peers refers to Peers, those words, **The Law of the Land**, refers to the Commons; the Law of the Land is for the tryall of the life of a free Commoner, by indictment, Presentment of good and lawfull men where the deed is done, or by Writ originall of the common Law, all this is declared in *Magna Charta* c. 29. and by 25. Ed. 3. c. 4 28. Ed. 3. c. 3. 37 Ed. 3. c. 8. 42. Ed. c. 3 If the Lords wil try any man by an Ordinance, they destroy that excellent Act of *Magna Charta*, and all those other good Laws.

Sir **Simon de Beresford** a free Commoner of **England** was condemned by the Lords to death by an Ordinance, which after the Lords better considering the matter, that they might be acquitted of that sentence, became suiters to the King, that what they had so done in future time might not be drawn into president, because that which they had so done was against the Law, *b* with this agrees the practice and usage of all times in this Land, all the free Commoners of this Kingdom have alwayes been tryed and acquitted or condemned in capitall causes by Jurers of their equals.

An Ordinance bindeth not in Law

E 5

at

sed by Sir
Ed. Cook
and pub-
lished by
the Order
of the House
of Com-
mons in
May 1641.
4 parts in-
stitut. fol.
41. 356.

b Rot. Par. 2
roul 4. E. 2.
Num 2. part
inst. page 50
with this a-
grees Sir
John Lees
case, Rot.
Par 42. E 3.
Num. 22. 23
2. inst. fo. 50

c See 4. part
inst. fol. 23.
48. 232. 298.
292. 2. part.
inst. fol. 47
48. 157. 643
4. H. 7. f. 18.
1 H. 7. f. 14.
3 part inst.
fol. 41.

at all, *c* and but *pro tempore*, as the two Houses now affirme, a mans life cannot be tryed by that which is not binding, and to continue for all times, for a life lost cannot be restored.

By an Act of Parliament of the 1. and 2. of *Philip and Mary*, cha. 10. It is enacted that all tryalls for Treason hereafter to be had, shall be according to the course of the common Law and not otherwise.

If the crime charged upon any be treason against the two Houses (against the Parliament it cannot be, for there is no Parliament without the King) **that is no Treason in Law**, as appears by 25. *Ed. 3. chap. 2. 11. R. 2. chap. 3. 1 Hen. 4. cha. 10. 1. and 2. Philip and Mary, chap. 10. 3 part of the Institutes Page 23.*

An Act of Parliament to make any a Judge where he is party, is a void act, *d* for none can be a Judge and party in the same cause, and therefore the House of Peers being a party touching the crime charged upon any man, whom they would try by an Ordinance for Treason against both Houses, cannot be a Judge.

By the Petition of Right, *e* if any man deserve death he ought to suffer the

d Dr Bo-
nams case
8. part of
Cooks re-
ports.

e Petition
of Right. 3.
Car, Regia

the same according to the Lawes of the Land established, and not otherwise; but an Ordinance of the Lords is no established law.

The Protestation, the Vow and Covenant, the solempne League and Covenant, the Declarations of both Houses, had, made and published since this unnaturall Warre, are amongst other things sworn and set down to be for the maintenance of the Lawes, the people of this land ought to enjoy the benefit of their Birth-right the Law of the Land, and the making good of the said Protestation, Vow and Covenant, League and Covenant, and Declarations, otherwise truth must be said and will be said, that there is brought in a new arbitrary and tyrannicall government.

3 part Instit.
fol. 89

If the Lords have taken one mans life by an Ordinance, they are not bound to take any more, and the case differs in case any appeale be made from a tryall by Ordinance to a tryall at common law, which was not done by that man whose life was taken away by an Ordinance.

The Lords ought to remember, that his Majesty and his Progenitors have made them a house of Peers, they are trusted to counsell him in peace,

ſ Newels
caſe 8 part
Cooks re-
ports,

g 4 Pars in-
ſtit. fol. 4. 9
27. Ed. 3.
cap. 1. 15.
3 part in-
ſtit. Fol. 125
h 1 H. 7.
fol. 20.
* 14. E. 3. c. 5

f and defend him in war, his Maſteſty
in Parliament is to conſult and treat
with the Peers, and with his Counſell
at Law, Judges, his Sergeants, Attur-
ney, and Solicitor, and Maſters of the
Chancery, the Lords and that counſell
by the reſpective Writs of Summons
to Parliament are to give Counſell,
g the houſe of Commons by their
Writ to performe and conſent.

In the houſe of Lords, the Court
of Parliament onely is, for they onely
examine upon oath, *b* with them, the
King in perſon ſits, and by them
there erroneous judgements * (upon
a Petition to his Maſteſty for obtain-
ing of a Writ of Errour) by the advice
of the Judges are reverſed, or affirm-
ed, &c. The lords are to remember
that their eminency and grandeur is
preſerved by the Laws, if they leave
all to will, and diſhonour their King,
and make nothing of the Laws, they
will make nothing of themſelves in
the end.

And therefore, it is well worth
your obſervation what was ſaid by Mr
John Pym a Member of the Houſe of
Commons in his ſpeech againſt the
Earle of *Strafford*, in the beginning
of the Parliament, which ſpeech is
published by the expreſſe order of the
Houſe

House of Commons, the words are these. *The Law is that which puts a difference betwixt good and evil, betwixt just and unjust, if you take away the Law, all things will fall into a confusion, every man will become a Law unto himselfe, which in the depraved condition of humane nature must needs produce many great enormities: Lust will become a Law, and envy will become a Law, Covetousnesse and Ambition will become Lawes, and what dictates, what decisions such Lawes will produce, may easily be discerned, i &c.*

They that love this Common-wealth as things now stand, will use all means to procure and Act of Oblivion, a generall pardon from his Majesty, the Souldiers their Arrears, and tender consciences a just and reasonable satisfaction, else we all must perish, first or last.

Mai. 17. 1647.

Gods preserve His Maj. ty, and the Lawes wherein their Lordships and the whole Kingdome are concerned.

David Jenkins prisoner
in the Tower of London.

THE
CORDIAL^{ct}L

OF
Iudge Ienkins
For the good People of
L O N D O N.

In reply to a Thing, called,
An Answer to the poy-
sonous seditious Paper of
M. David Fenkins; By H.P.
Barister of Lincolns-
Inne.



Printed in the Year, 1647.

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The Gordiall of *Iudge*
Fenkins, for the good
 People of L O N -

D O N .

A F er the said Mr. H. P.
 hath made a recitall of the
 Heads of my *Vindication*,
 hee deduced his Answer
 unto these eight particu-
 lars, which follow *verbatim*.

1.

*It cannot be denied, but the Parlia-
 ment sits by the Kings writ, nay if Sta-
 tute Law bee greater then the Kings
 writ, it cannot be denied but the Parlia-
 ment sits, or ought to sit by something
 greater then the Kings writ: And if it be
 confessed that the Parl. sits by the Kings
 writ, but does not act by the Kings writ,
 then it must follow that the Parlia. is
 a void vain Court, and sits to no purpose;
 nay it must also follow, that the Parlia-
 ment is of lesse authority, and of lesse
 use then any other inferiour Court; for-
 asmuch as it is not in the Kings power to*
 con-

controule other Courts, or to prevent them from sitting or acting.

2.

This is a grosse non sequitur, the Kings power is in himselfe; Ergo, it is not derived to, nor does reside virtually in the Parliament. For the light of the Sunne remains imbodyed, & exunhausted in the Globe of the Sun, at the same time as it is diffused and displayed through all the body of the ayre; and who sees not that the King, without emptying himselfe, gives Commissions daily of Oyre and Terminer to others, which yet himself can neither frustrate nor elude? but for my part I conceive it is a great error to infer that the Parliament hath ouely the Kings power, because it hath the Kings power in it: for it scemes to me, that the Parliament does both sit and act by concurrent power, devolved both from the King and Kingdome; and in this some things are more obvious and apparent then in others. For by what power does the Parliament grant Subsidies to the King? if only by the power which the King gives, then the King may take Subsidies without any grant from the Parliament: and if it bee so by a power, which the people give to the Parliament; then it will follow, the Parlia-

Parliament hath a power given both by King and Kingdome.

3.

The sending Propositions to the King, and desiring his concurrence, is scarce worth an Answer; for Subjects may humbly petition for that which is their strict right and property. Nay it may sometimes beseech a superiour to prefer suite an inferiour for matters in themselves due. God himselfe hath not utterly disdained to beseech his own miserable, impious, unworthy creatures; besides, 'tis not our Tenet, that the King hath no power, because he hath not all power, nor that the King cannot at all promote our happines, because hee hath no just claime to procure our ruine.

4.

We affirm not that the Kings power is separated from his Person, so as the two Spencers affirmed, neither doe we frame conclusions out of that separation, as the two Spencers did, either that the King may be removed for misdemeanours, or performed per asperitè; or that the Subject is bound to govern in ayd of him; we only say, that his power is distinguishable from his person

person, and when he himselfe makes a distinction betwixt them, commanding one thing by his Legall Writts, Courts and Officers, and commanding another thing extrajudicially by word of mouth, Letters, or Ministers, wee are to obey his power rather then his person.

5.

we take not from the King all power of pardoning Delinquents, we only say it is not proper to him *quarto modo*: For if the King pardon him which hath murdered my son, his pardon shall not cut me off from my appeale; and 'tis more unreasonable, that the Kings pardon should make a whole State which hath suffered remediless, then any private man. So if the King should deny indemnity to those which in the fury of war have done things unjustifiable by the Lawes of Peace, and thereby keep the wounds of the State from being bound up, 'tis equitable that an Act of Indemnity should be made forcible another way. And if his will not hold, yet this is no good consequence, the King is absolute in point of pardons, therefore hee is absolute in all things else; and the Parliament hath no power to discharge De-
lin.

inquinencies, therefore it hath no power
in other matters.

6.

The Parliament hath declared the
King to be in no condition to Govern:
but this must not be interpreted rigid-
ly, and without distinction; for if the
King with his sword drawn in his
hand, and pursuing the Parliament
and their adherents as Rebels, be not
fit for all Acts of Government, yet 'tis
not hereby insinuated that he is div-
ested of the habit or right of Governing:
If he be not unqualified now, he is un-
qualified for the future; if he may not do
things destructive to the Parliament,
he is not barred from returning to the
Parliament, or doing justice to the
Parliament. This is a frivolous cavil,
and superfluous.

7.

We swear, that the King is our
supreme Governour over all persons,
and in all causes; but we doe not
swear he is above all Law, nor above
the safety of his people, which is the
end of the Law, and indeed Para-
mount to the Law it selfe. If he be a-
bove Law, or liable to no restraint of
our Law, then we are no freer then the
French

French or the Turks; and if he be above the prime end of Law, common safety, then wee are not free as the French or Turks: For if the totall subversion of the French or Turk were attempted, they might by Gods Law, imprinted in the Book of Nature, justify a self-defence; but we must remedlesly perish, when the King pleases to command our throats. Besides, how atchieved the King of England such a Supremacy above all Law and the community it selfe, for whose behoofe Law was made? If Gods donation be pleaded, which is not speciall to him, or different from what other Kings may pretend to, then to what purpose serve our Lawes, nay, to what purpose serve the Lawes of other Countries? for by this generall donation, all Nations are condemned to al servitude as well as we, If the Law of this Land be appealed to, what books hath Mr. Jenkins read, where hath he found out that Lex Regia, whereby the people of England have given away from themselves all right in themselves? Some of our Books tell us, that we are more free then the French; that the King cannot oppresse us in our persons or estates, by imprisonment, denying justice: or laying Taxes without

our

our consents : other Books tell us, that the safety of the people, is the supreme Law, and that the King hath both God and the Law for his Superiour. But all this is nothing to learned Mr. Jenkins.

3.

We admit, that no Acts of Parliament are compleat, or formally binding, without the Kings assent : yet this is still to be denied, that therefore without this assent particular/y exprest, the two Houses can doe nothing, nor have any virtuall power at all, no, not to examine Mr. Jenkins, nor to doe any other thing of like nature, though in order to publiks justice and safety. I have done, and wish M. Jenkids would call in and lick up againe his black infamous execrable reproaches, so filthily vomited out against the Parliament.

To the first.

I Was examined by a Committee appointed by the House of Commons : I say and said that the House of Commons have no power to examine me, for that it is no Court ; every Court hath power to
exa-

examine upon Oath; this power the House of Commons never claimed: The Court of Pie-powders, court Baron, Hundred Court, County Court, and every other Court of Record, or not of Record, hath power to examine upon oath and an examination without Oath is a communication only; examination in Law is upon Oath.

5 H. 4. c. 3.
3 H. 6. 46.
19 H. 6. 43,
35 H. 6. 5.

Sir Anthony
Maynes
case.
Cook; pars,
Reports,
Lit. 2. lib.
Sect. 194. 6.
H. 4. 1.

There is no Court without a power of tryall; the house of Commons have no power to try any offence, nor ever practised it by Bill, Inditement, Information, Plaint, or Originall, Writt, to reduce it to tryall, nor to try it by Verdict, Demurrer or Examination of Witnesses upon Oath, without which there can be no condemnation or judgement; and that which can attaine to no reasonable end, the Law rejects as a thing inutile and uselesse; *Sapiens incipit a fine.*

The Writ whereby they are called gives them power, *Ad faciendum & consentiendum*; to what & to such things *Quæ ibidem de communi Consilio ordinari contigerint*, (*viz.*) in the Parliament: This makes nothing at all for a Court for the house of Commons; that *consilium* which that Writ intends, is cleared partly by the Writ

4 pars, instit.
fol. 4. & 9.

Writ for chusing Knights, &c. For the King by that Writ is said to resolve to consult and treat with the Prelates and Peers of the Kingdome, for and touching the great concerns of the Common-wealth (for the King never sits in the House of Commons;) and this also is made evident by the Writs to the Prelates, Peers, Judges, and to his Councell at Law; The words in their Writ are; *To appear and attend the Parliament, consilium impensuri*, the one doth *consulere*, the other *facere et consentire*.

The House of Lords, where the King sits in person, assisted by his Lords, Judges, Serjeants, Attorney, Solicitor, Masters of the Chancery, is a Court of Record to many purposes, set down in the Bookes of Law, and the Statutes of the Land, and that Court is only in the House of Lords, where the King sits.

A Court must either be by the Kings Patent, Statute Law, or by the Common Law, which is common and constant usage; the House of Commons hath no Patent to be a Court, nor Statute Law to be a Court, nor common usage; they have no Journall Book, but since E. 6. time: was there ever Fine by the Use of

7 H. 6. 28.
1 H. 7. 20.
13. E. 3. ca. 5
4. pars, in-
stit. pag. 21.

Plowd.
Com. 319.

Commons, estreated into the Exchequer ? For murder or Felony they can imprison no man, much lesse for Treason ; that House which cannot doe the lesse, cannot doe the greater.

25. H. 3. c. 4.
3. Car. Pe-
tition of
Right

It is ordained, that no man shall be imprisoned or put out of his Franchise by the King or his Councell, but upon Indictment or presentment of his good and lawfull Neighbours, where the deed is done, or by originall Writ at the Common Law, and so is *Lex terra* the Law of the Land mentioned in *Magna Charta*, cap. 29. expounded, and the said *Magna Charta*, and *Charta de Foresta* are declared by the Stat. of 25. E. 1. c. 1. to bee the Common Law of the Land. All Judges and Commissioners are to proceed *Secundum legem & consuetudinem Regni Angliæ*, as appeares by all proceedings in all Courts, and by all Commissions : and therefore the House of Commons by themselves, proceeding not by Indictment, Presentment, or Original Writ, have no power to imprison men or put them out of their Franchise.

4. pars, in-
stit. pag. 1
3 Pars, in
stit. p. 23.

This no way trenches upon the Parliament ; for it is in Law no Parliament without King and both Houses ; I have onely in my Paper deli-

delivered to M. Corbet, applyed my
 selfe to that Committee, that had no
 power to examine me, but I never
 thought, said, or wrote, that the
 Parliament had no power to examine
 me: the Law and custome of this
 Land is that a Parliament hath power
 over my life, liberty, lands and
 goods, and over every other subject,
 but the House of Commons of it self
 hath no such power.

For the Lord Cooks relation, that
 the House of Commons have imposed
 Fines, and imprisoned men in
 Queene Elizabeth's time, and since;
 Few facts of late time never question-
 ed, make no power power nor
 Court; *à facto ad jus* is no good
 argement; for the words of the Sta-
 tute of 6 H 8 c. 16. that a licence to
 depart from the House of Commons
 for any Member thereof, is to be en-
 tred of Record in the Book of the
 Clerk of the Parliament, appointed,
 or to be appointed for that House,
 doth not conclude that the House of
 Commons is a Court of Record.

For first, that Law of 6 H. 8. c. 26.
 handles no such question, as that,
 whether the House of Commons be a
 Court; it is a maxime in all Lawes,
Lex aliud trahens nil probat, the word

12. H. 7. 10.
 Princes
 Case,
 8 Pars,
 Cook.
 1 Pars,
 Instit. p.
 159.
 14. H. 8. 3.
 Dier, 38.
 H. 8. 60.

1 Pars,
 Instit. 19. b.

4. Pa. Inst.
 c. PaPl.

Hobbarts
 reports fol.
 152.

Hobbarts
 reports
 fol. 154.

112. Nat.

3r. 90.

112. Nat.

3r. 13.

2. H. 4. 33.

4. H. 6. 49.

(*Record*) there mentioned, is onely a memoriall of what was done and entred in a book: A Plaint removed out of the County-Court to the Court of the Common-Pleas, hath these words in the Writ of remove, *Recordari facias loquelam*, &c. and yet the County Court is no Court of Record; and so for ancient Demesne in a Writ of false judgement, the words are *Recordari facias loquelam*, &c. and yet the Court of ancient Demesne is no Court of Record; and so of a Court Baron, the Law and custome of *England* must be preserved, or *England* will be destroyed, and have neither Law nor custome.

Let any man shew me, that the Court of Lords, or the House of Commons in any age hath made any man a Delinquent (*Rege dissenziente*) the King contradicting it under his Great Seale. *Mitchell*, and others of late were condemned by the prosecution of the House of Commons in *K. James* his time; did King *James* ever contradict it? And so of ancient times, where the House of Peeres condemned the Lord *Lathmer* in 50. E. 3. The Kings pardon freed him: which shewes cleerly, that the Kings expresse or implied assent must of necessity.

4. Pars. In
stit. Tit.
Parliam.
pag. 23.

cessary be had to make a Delinquent.
The execution of the sentence is in
the Kings name.

The Gentleman saith, *That the
Parliament sits, or ought to sit by some-
thing greater than the Kings writ, &c.*

No Parliament did ever sit without
the Kings Writ, nor could ever Par-
liament begin without the Kings pre-
sence in person, or by a Guardian of
England by patent under the Kings
Great Seal, the King being *in remo-
tis*, or by Commission under the
Great Seal to certain Lords repre-
senting the Kings person, and it hath
been thus in all Ages unto this Ses-
sion of Parliament, wherein his Ma-
jesty hath been pressed, and hath pas-
sed two acts of Parliament, one for a
Trienniall Parliament, and another
for a perpetuall, if the Houses please,
to satisfie their desires; how these two
Acts agree one with another, and with
the Statute in Ed. the thirds time,
where Parliaments are ordained to be
holden every yeare, and what mis-
chiefs to the people of this Land
such length of Parliaments will pro-
duce by protections and priviledges to
free them and their meniall servants
from all debts during their lives, if
they please to continue it so long, and

4 Pars. Inst.
p. 4. and 6.

4 E. 3 c. 14.
36. E. 3. c. 10
21. Jac. the
Act of Li-
mitation
of Actions,
cap. 22.

how destructive to mens actions against them, by reason of the Statute of Limitations, which confines their actions to certain years, and many other inconveniences of greater importance, is easie tounderstand.

4 pars, Inst.
p. 14.
Vow and
Covenant,
p. 11.

How can any man affirme, that the two Houses of Parliament doe act now by the Kings Writ, which relates to Councell and Treaty with the King, concerning the King, the defence of his Kingdome and of the Church of England, these are three points which it tends to, as appears by the Writ. They keepe their King prisoner at *Holmby*, and will not suffer him to consult and treat with them. They have made a Vow & a Covenant to assist the forces raised & continued by both Houses against the forces raised by the King without their consent and to the same effect have devised the Oath which they call the *Negative Oath*: Is this to defend the Kings Kingdom, or their kingdome?

3 pars,
Cook Dean
and Chap.
ter of
Norwich.

When by their Solemne League and Covenant they extirpate Bishops, Deans and Chapters root and branch, is this to defend the church of England? (that Church must necessarily be meant, that was the Church of England when the said Writ bore test)

they

they were not summoned to defend a Church that was not in being ; to destroy and defend the Church are very contrary things ; the Church is not defended, when they take away and sell the Lands of the Church.

The Gentleman saith, *The King cannot controule other Courts of Justice, or prevent them from sitting, or acting, and therefore not the two Houses, &c.* It is

true, the King cannot controule or prevent his other Courts; for that they

are his ordinary Courts of common Justice, to administer common right

unto all men, according to the fixed Laws. The Houses make no Court

without the King, they are no body corporate without the King, nor Par-

liament without the King, they all make one corporate body, one Court

called the Parliament, whereof the King is the head, and the Court is in

the Lords House, where the King is present ; and as a man is no man with-

out a head, so the houses severed from the King, as now they are, have no

power at all, and they themselves by levying war against the King, and im-

prisoning of him, have made the Statute for not dissolving, adjourning, or

proroging this Parliament of no effect, by the said Acts of their own ;

they

14 H. 8. 3.

36 Hen. 8.

Dier. 60.

4 Pars, inst.

P. 1.

they sit to no purpose without his assent to their Bills, they will not suffer him to consult with them, and treat and reason with them, whereby He may discern what Bills are fit to pass, and what not, which in all Ages the Kings of this Land have enjoyed as their undoubted Rights, and therefore they sit to no purpose by their own disobedience and fault.

17 H. 8. c. 24.
28 H. 8. 17.
Dier.

2 R. 3. 11.

For the ordinary Courts at *Westminster*, the Judges in all those Courts are Judges by the Kings Patent or Writ, otherwise they are no Judges: the Houses can make no Judges, they are no Judges at all who are made by them: the whole and sole power of making Judges belongs to the King: the King cannot controule or prevent his owne Judges from sitting and acting, but the Houses He may, for they are not the Kings Judges but the Judges of the 2. Houses. In his other Courts, the King commits his power to his Judges by his Patent, and they are sworn to do common right to all men, and the King is sworn not to let them from so doing, the King cannot judge in those Courts, nor controule; but the King is both Judge and Controuler in the Court of Parliament: *Quoad* Acts for his assent or dissent doth give life

or death to all Bills. Many Lawyers have much to answer to God, this Kingdome, and to Posterity, for puzzling the people of this Land with such Fancies, as the Gentleman who wrote the Answer to my Paper, and others have published in these Troubles, which hath been none of the least causes of the raising and continuing of them: And so I have done with the first part of this Answer.

AD. 2.

For the *Non sequitur*, in the second Section of the Gentl. Answer, the Antecedent and the Consequent are his own.

(*libellus*)

Quem recitas meus est (6 Fidentine!)

Sed male dum recitas incipit esse tuus.

My words are, that the King is not virtually in the two Houses at *Westminster*, to enable them to grant pardons, for that whole and sole power by the Law belongs to the King: My paper hath no such thing, as that the Kings power cannot bee derived to others, or the vertue of his power: For his power and the vertue of his power, is in all patents to his Judges, in Charters to Corporations, in Com-

F 5

mission

17H.3.614

missions of all sorts, and in the Parliament assembled by force of his Writ of Summons, so long as they obey him: but when they renounce that power, and claime it not from the King, and declare to the Kingdome that he is not in condition to Govern, and imprison him, and usurp to themselves all Royall Authority, as the two Houses now doe, no reasonable man can affirme that they Act by the power of their prisoner, who hath no power to give them, that by force of armes take all power to themselves.

The Gent. saith, The King grants *Commissions daily of Oyre and Terminer, which he cannot frustrate nor eude.* The King may revoke and discharge the commission by his Writ, as hee may remove all Iudges, and place other men in their roome; and any Kings death determines all the Iudges Patents at *Westminster Hall*, Commission of *Oyre and Terminer*, &c. and so hee might dissolve both houses in al times, by his Writ under the Great Seale, untill that in this Parliament, by his own concession, the King of his goodnesse hath secluded himselfe; which goodnesse hath been full ill requited.

4E.4. 39.

5E.4.4.

3 Eliz. Dyer

165.

1 Mar.

Brooks case

447.

The

The Gentl. affirms, That the power
the parliament hath is concurrent from
the King and Kingdome; which, he con-
 ceives is proved by the grant of Subsi-
 dies to the King by the Parliament. 4 pars, in this
pag.
 The mistaking of this word (*Parlia-
 ment*) hath been mischievous in these
 times to this Land, and it is affected-
 ly mistaken, which makes the sinne the
 greater, for the two Houses are not
 the Parliament, as before is declared,
 and at this time so to inculcate it;
 when all men know, that of the 130.
 Peers of the Kingdom, who were Tem-
 porall Peeres before the Troubles:
 there are now not above 30. in the
 Lords House, and in the House of
 commons about 200. of the principal
 Gent. of the Kingdom left the House
 and adhered to his Majesty, who is im-
 prisoned by them shewes no such can-
 dor as is to be desired.

It is true that no Tallage can bee
 layd upon the people of this Land but
 by their consent in Parliament, as ap-
 peareth by the Lawes mentioned in
 the Margent; but you shall find in M.
Seldens learned Booke, called *Mare
 Clausum*, a number of presidents in
Henry the Thirds time for Ship-mony
 stly condemned this Parliament, to
 e which his Majesty assented; and in
 truth

25 E. 1. con-
firmatio
chartarum
chap. 6.
34 E. 1. 4.
de Tallagio
non conce-
dendo.

truth that Ship-mony was condemned before by the said two Statutes of 25 E. 1. & 34 E. 1. *de Tallagio non concedendo. Dangelet, Englishmen*, and many greivous burthens were layd upon the people and borne, untill that memorable Princes time. But I am of opinion that the Common Law of the Land did alwayes restraine Kings from all Subsidies and Tallages, but by consent in Parliament; which doth appeare by *Magna Charta* the last chapter, where the Prelates, Lords, and Communalty gave the King the fifteenth part of their moveables. In truth it is no manner of consequence, because the King cannot take what he pleaseth of the Subjects goods, that therefore they have a concurrent power in Parliament: there have been many Parliaments and no Subsidies granted; Parliaments may be without Subsidies but Subsidies cannot be without Parliaments: of antient times Parliaments rarely granted any, unlesse it were in the time of forraine Warres; and in my time, Queen *Elizabeth* refused a Subsidy granted in Parliament, and in the Parliament of 1 Jac. none were granted. The Gentl. should make a conscience of blinding the people with such untrue colours,

lours, to the ruine of the King, and people.

A D 3.

The Gentl. affirms, *That the sending Propositions to the King, and desiring his concurrence, is scarce worth an answer, for Subjects may humbly petition for that which is their strict right and property, &c.* The Propositions sent to Newcastle, are in print; wherein the two Houses are so farre from humbly petitioning, that they stile not themselves his Majesties Subjects; as appears by the Propositions.

That they have a strict right or property to any one of these Propositions is a strange assertion, every one of them being against the Lawes now in force. Have the two Houses a strict right and property, to lay upon the people what Taxes they shall judge meet? To pardon all Treasons, &c. that is one of their Propositions. Have they a strict right and property to pardon themselves? and so for all the rest of their Propositions.

These Propositions have been Voted by both Houses, the Kings assent (they being drawn into Bills) makes them Acts of Parliament by both the King
no

11 H. 7. 20.
1 Jac. c. 1.
1 Car. c. 7.

no right to assent or dis-assent? Was the sending but a Complement? All our Law-books and Statutes speak otherwise. This Gent. and others, must give an account one time or other for such delusions put upon the people.

AD. 4.

The Gent. saith, *They affirm not, that the Kings power is separated from his person, so as the two Spencers affirmed, &c* His Majesties person is now at *Holaby* under their Guards; have they not severed his power from him, when by no power they have left him, he can have two of his Chaplains, who have not taken their Covenant, to attend him for the exercise of his conscience?

11 Ed. 3. Ex^o
William Hu-
gonis
Calvins case
1 E. c. 2.
7 pars, F e-
ports, 11.

For the three Conclusions of the *Spencers*, doe not the two Houses act every of them? They say, his Majesty hath broken his Trust, touching the Government of his people: They have raised armies to take him, they have taken him and imprisoned him; they govern themselves; they make Laws, impose Taxes, make Judges, Sheriffs, and take upon them *omnia insignia summe potestatis*: Is not this to remove the King from his misdemeours?

to reform *per asperum*, to govern in aid of him; the three Conclusions of the *Spencers*? Doe they think the good people of *England* are become stupid, and will not at length see these things?

The Gentleman saith, *They doe not separate his power from his Person, but distinguish it, &c.* His power is in his legall Writs, Courts, and Officers: when they counterfeit the Great Seal, and seale Writs with the same, make judges themselves, Courts and Officers, by their own Ordinances against his consent, declared under his true Great Seale of *England* (not by word of mouth, letters, or ministers onely) their Seale is obeyed, their own Writs, their own Judges, their own Courts, their own Officers, and not the Kings: The time will come when such strange actions & discourses will be lamented

plowd. 4.
Elix. 213.
the Kings
Power and
his Person
are indivisi-
ble.

A D. 5.

The Gentleman goes on, *We take not from the King all power of pardon- ing Delinquents, we onely say it is not proper to him quarto modo, &c.* What doe you meane by *quarto modo*? I am sure, *Omnis Rex Anglia, solus Rex & semper Rex*, can doe it, and none else; read the books of the Law to this purpose, collected by that reverend
and

Stanford,
pleas 99.
27. D. 8c. 14
Diet, 163.

and learned Judge *Stanford*, from all Antiquity to his time, who died in the last yeare of King *Philip* and Queene *Maries* Reigne, you shall finde this a truth undeniable; and this power was never questioned in any Age in any Book by any untill this time, that every thing is put to the question: You Gentlemen, who professe the Law, and maintain the party against the King, return at length, and bring not so much scandall upon the Law, (which preserves all) by publishing such incredible things.

Brañ. lib. 3.
cap. 14.
fol. 132.
1 pars, In-
stit. p. 344.
plow. 3.
Eliz. 236,
237.

We hold only what the Law holds: the Kings Prerogative and the subjects Liberty are determined, and bounded, and admeasured by the written Law what they are; we doe not hold the King to have any more power, neither doth his Majesty claime any other but what the Law gives him; the two Houses by the Law of this land, have no colour of power, either to make Delinquents, or pardon Delinquents, the King contradicting: (and the Army under Sir *Thomas Fairfax* (howbeit but Souldiers) doe now understand that to be Law, and doe now evidently see, and assuredly know, that it is not an Ordinance of the two Houses, but an act of parliament, made by the King, Lords, and

and Commons that will secure them, and let this Army remember their executed fellow-Souldiers,) and the Law was alwayes so taken by all men untill these troubles, that have begot Monsters of opinions.

A D. 6.

This Gentleman sayes, *The Parliament hath declared the King to be in no condition to govern, &c.*

There is no end of your distinctions, I and you professe the Law; shew me Law for your distinctions, or letter, sillable, or line, in any Age in the books of the Law, that the King may in one time be in no condition to govern, and yet have the habit of governing. and another time he may (*viz.*) when the two Houses will suffer him: The Law saith thus, *Ubi lex non distinguit, non est distinguendum.*

He saies, *The King is not barred from returning to His Parliament,* (as he calls the two Houses) he knows the contrary, the whole City knows the contrary, *Nos juris consulti sumus sacerdotes,* (as *Justinian* the Emperour hath it, in the first book of his *Institutions*) and therefore knowledge and truth should come from our lips: Worthy and ingenious men
will

will remember, and reflect upon that passage of that good and wise man Seneca, *Non qua iur, sed qua eundum*; follow not the wayes of the Lawyers of the House of Commons: God forgive them, I am sure the King will, if they be wise and seek it in time.

A D. 7.

5 Eliz. cha
1. Caw-
drys case
5 pars.
ol. 1.

This Oath
is allowed
by the
Common
Law of the
Land.

The Gent. sayes, *We sweare that King is our supreme Governour over all persons and in all causes, &c.* Why hath he left out the word (*onely*?) for the Oath the members now take, is that King *Charles* is now the onely and supreme Governour in al causes, over al persons, and yet they keep their onely Supreme Governour now in prison, and yet now in Parliament by vertue of their prisoners Writ, and by a concurrent power in this Parliament, and by their own strict right and property, (as the Gentleman affirms in his Answer) These things agree well with their Oath, that the King is the onely Supreme Governour in all causes over all persons, This Oath is taken now in the Parliament time by all the Members of the House of Commons, and is required by the Law to be taken in all Parliaments, otherwise they have no power, nor

co-

colour to meddle with the publick Affaires.

This Oath being taken in Parliament, that *the King is the only and Supreme Governour in all Causes*, then it follows in Parliament causes; *over all persons*, then over the two Houses; Let them keep this Oath, and we shall be sure of Peace in the Land: and good Lawyers ought to desire peace both for the publicke good, and their private, and not dishonour that Noble profession, as many doe in this miserable time.

The Gent. sayes, *wee doe not swear that the King is above all Law, nor above the safety of his people*; neither doe we so sweare, but his Majesty and we will sweare to the contrary, and have sworn, and have made good, and will by Gods grace make good our Oath to the world, that the KING is not above the Law, nor above the safety of his people; the Law, and the safety of his people are his Safety, his Honour, and his Strength.

A D 8.

The Gent. concludes, *That Alls of Parliament are not formally binding, nor compleat without the Kings assent, yet the Houses have a virtuell power without*.

out the Kings particular assent, to doe things in order to publick justice and Safety (viz.) In setting up the Excise, in raising and maintaining of Armies, in Taxing the people at pleasure with Fifth and Twentieth part, Fifty Subsidies, Sequestrations, Loans, Compositions, imprisoning the King, abolishing the Common prayer Book, selling the Churchs Lands, &c. all these are in order to the publick Justice and Safety.

Mr. H. P. you are of my profession, I beseech you, for the good of your Country, for the Honour of our Science perswade your self and others, as much as in you lies, to beleve and follow the monition and counsell of that memorable, reverend, and profoundly learned in the Lawes and Customes of the Land, the Lord Cooke, who writes as becomes a great and a learned Iudge of the Law (a person much magnified by the two Houses) in these words : **Peruse ovet all Books, Records and Histories, and you shal find a Principle in Law, a Rule in Reason, and a Triall in Experience, that Treason doth ever produce fatall and small destruction to the offender, and never straitnes to the desired end (two in-**
 cidents

3 par. Inst.
pag. 36.

cidents inseparably thereunto) and
 therefore let all men abandon it, as
 the popsonous bait of the Debiss,
 and follow the Precept in holy
 Scripture, SERVE GOD,
 HONOUR THE KING,
 AND HAVE NO COM-
 PANY WITH THE SE-
 DITIOUS.

Concluding.

*I say againe, that without an Act of
 Oblivion, a gracious generall Pardon
 from His Majesty, the Arrears of the
 Souldiers payd, a favourable regard had
 to tender Consciences, there will be nei-
 ther Truth nor Peace in this Land,
 nor any man secure of any thing hee
 hath.*

By me David Jenkins Prisoner
 in the Tower.

A



A
DISCOVRS E
TOUCHING
*The Inconveniencies of a
Long-continued*
PARLIAMENT

A Perpetuall Parliament is repugnant to the Act made this Parliament for a Triennial Parliament; for how can every three yeares a Parliament beginne, if this bee perpetuall, which may bee so if the two Houses please?

2. An adjournment of the Parliament makes no Session, *4 pars; institut. fol. 27.* Howbeit, before the adjournment, the KING gives His Royall assent to some Bills, *Cocke. ibid.*

3. There is no Session till a Prorogation

rogation or dissolution of the Parliament.

4. This Parliament, as appears by the Act for not dissolving thereof, set downe in the printed Statutes of this Parliament, fol. 138. cannot be prorogued or dissolved, but by Act of Parliament. There hath been as yet no Act of Parliament in that behalfe: And therefore all the Acts of this Parliament, are Acts of one Session.

Plowd.
com. 33. H.
8.
Bro. relation
35. Bro. Parle
86.
Dier. 1. Ma-
ria 85.

5. All Acts of one Session relate to the first day of the Parliament, and all the Acts of such a Parliament are Acts of one day: so the Act for the Trienniall, and the Act for this Perpetuall, are two Acts of one day by the Law.

6. 4 Ed. 3. cap. & 36. Ed. 3. cap. 10.
A parliament is to bee holden once every yeare, and more often if need shall bee; those Acts are confirmed by the Act for the Trienniall Parliament. How doth a perpetuall Parliament agree with a Parliament once every yeare, or with the intention of those Lawes? How doth a Parliament every three yeares agree with a Parliament for ever, which may be if the two Houses please?

7. The result is this; at one day in Law:

Law this Parliament two Acts have passed (for howbeit the one was in 16. Carol. and the other in 17 Carol. yet both in Law are Acts of one day) the one saith there shall be a Triennial Parliament after the end of the sitting of this Parliament: The other this Parliament shall sit for ever if they please. The one will have a Parliament with an end, the other, a Parliament without an end.

1 Pars. Doct
Bonhams
case. fo. 118
3. E. 3. 3. 30
33. E. cessa-
vit, 32
37. H. 6
Annuity 41.
1 Eliz. Di-
er, 313.

When an Act of Parliament is against common Right or Reason, or repugnant, or impossible to be performed, the Common Law shall controule it, and adjudge this Act to be void; they are the words of the Law.

An Act of Parliament, that a man shall be Judge in his own cause, is a void Act. *Hobbs* fol. 120.

Begin with Common Right. It is against Common Right, that indebted men should not pay their debts: That if any Member of the House of Commons doe any Subject wrong by disseising him of his land, or dispossessing him of his goods, or blasting of his fame, or doing violence to his person, that such persons during their lives should not be questioned by a Priviledge of Parliament, and that extended also to many other beside them.

themselves. Common Right doth
 16. abhorre these Enormities, which a
 yet perpetual Parliament doth beget, be-
 the sides the utter destruction of all mens
 actions, real, personal, or mixt, who
 have to do with Parliament-men, by 21. Jac. c. 16.
 the Statute of Limitation, which
 confines Suites to certain yeares.

For Common Reason. Parlia-
 ments were ordained for Remedies
 to redresse publique Grievances; It is
 against Reason they should make pub-
 lique and insufferable Grievances.
 The Law of the Land allowes no
 protection for any man employed in
 the service of the Kingdom but for a
 year, to be free from Suites, and in
 many Suites none at all, howbeit he
 be in such service; but a Parliament 39. H. 6. 39.
 perpetual may prove a protection, not
 for a year, but for ever, which is a-
 gainst all manner of Reason.

For impossibility. The death of his
 Majesty (whose life God prolong)
 dissolves it necessarily; for the Writ
 of Summons is, *Carolus Rex in hoc*
individuo, and *Carolus Rex* is in this
 particular, *Habituus colloquium &*
tractatum cum prelati & proceribus,
 &c. King Charles being to have Con-
 ference and Treaty with his Prelates
 and Peeres; *Carolus Rex* cannot have
 G *colloquium*

2: H. 5.
Cook, Title
Parl. 3.pars.

colloquium & tractatum, Conference and Treaty when he is deceased, and therefore it is as impossible for any Parliament to continue as long as they please, as for a Parliament to make a dead man alive.

For Repugnancy. That which is but for a time cannot be affirmed to have continuance for ever, it is repugnant.

The end of the Act 17. *Caroli Regis*, which is to continue at pleasure, is in the said act expressed to be to raise credit for Money for these three purposes. First, for relief of his Majesties Army and People in the North. Secondly, for preventing the imminent danger of the Kingdom. Thirdly, for supply of other his Majesties present and urgent occasions. These ends are ended, the reliefe of that Army, the imminent danger supposed was six yeares ago, the supply of his Majesty hath been a supply against Him; take away the end, the meanes thereto are so no purpose; take away the cause, the effect ceaseth; and therefore the three ends of this Act being determined, it agreeth with Law and Reason, the Act should end, the Law rejects things unprofitable and uselesse.

Sir Anthony
Maines case
3.pars. 1. H.
4. 6. Littl.
Cap. Villeu.

A perpetual Parliament (besides that

that it incites men to selfe-ends, destructive of the publique, of which the whole Kingdom hath had sufficient experience) will be a constant charge to the Kingdom; for that every County and Burrough, who send Members to the Parliament, are by the Law to pay Wages to their Parliament-men, which to many Counties will amount above some subsidies yearly: there are many poor Borough-towns in each County of this Kingdom, who being to maintain two Burgeses in Parliament, will be quickly beggered, if the Parliament have no end, for all which Reasons it is clear, that such long continuance of Parliaments, will in stead of a Remedy (which is and ought to be the proper and true ends of Parliaments) become an insufferable Grievance and Oppression to all the People of the Land.

The Writ of Summons this Parliament is the Basis and Foundation of the Parliament. If the Foundation be destroyed the Parliament falls. The Assembly of Parliament is for three purposes. *Rex est habiturus colloquium & tractatum cum Prælatiis, magnatibus & proceribus super arduis negotiis, concernentibus, 1. Nos. 2. Defensionem regni nostri. 3. Defensionem Ecclesiæ Anglicanæ.*

no. This Parliament hath overthrow
 this Foundation in all three parts
 1. Nos. The King they have chased
 him away, and imprisoned him; they
 have voted no Prelates, and that a
 number of other Lords, about forty
 in the City must not come to the
 House, and about forty more are out
 of Town, the *colloquium & tractatum*
 are made void thereby: For the King
 cannot consult and treat there with
 men removed from thence. 2. *Defen-*
sionem regni nostri, that is gone; they
 have made it their Kingdom, not His,
 for they have usurped all his Sove-
 raignty. 3. *Defensionem Ecclesie Angli-*
cane, that is gone, that *Ecclesia Angli-*
cana must be understood necessarily the
 Church, that at the teste of the Writ
 was *Ecclesia Anglicana*, they have de-
 stroyed that too. So now these men
 would be called a Parliament, having
 abated, quashed, and made nothing of
 the Writ whereby they were summon-
 ed and assembled. If the Writ be made
 void, all the Proceſſe is void also: that
 House must needs fall where the Foun-
 dation is overthrow, *Sublato funda-*
mento opus cadit, the Foundation being
 taken away the worke fals, is both a
 Maxime in Law and Reason.

For some yeares past, there is no
 crime

crime from treason to trespassse, but they are guilty of : all Treasons, Felonies, Robberies, Trespasses are *contra pacem, coronam & dignitatem Regis*, against the peace, Crown and Dignity of the King ; as appears by all Indictments in all Ages. *Pax Regis*, the Kings peace, *Corona Regis*, the Kings Crown, *Dignitas Regis*, the Kings Dignity, are all trod under foot, and made nothing ; *Pax Regis*, the peace of the King is become a Warre against the King, his Dignity put into prison, and the Crown put upon their own heads.

All the Judges of *England* have resolved, that Noble-men committing Treason have forfeited their Office and Dignity ; *Their Office is to counsel the King in time of peace, to defend him in time of war*, and therefore those men against the Duty and end of their Dignity taking not onely Councel, but Armes also to destroy Him, and being thereof attaint by due course of Law, by a tacite condition annexed to the estate of their Dignity, have forfeited the same ; they are the words of the Law, and therefore they have made themselves incapable to be Members of the Upper House.

Nevils case
7. part. 34.
2. lac.

The Oppressions of the People.

Briberies, Extortions, Monopolies, ought, to be inquired after by the House of Commons, and complained of to the King and Lords, What have they done?

The House of Commons cannot by the Law commit any man to prison who is not of the said House, for Treason, Murder, or Felony, or any thing but for the disturbance of the publique peace, by the priviledge of the whole Body.

They have no power by the Writ, which the King issueth to elect and returne Members of that House, so to do. For the Writ for them is onely *ad faciendum & consentiendum*, to those things, whereof his Maicesty shall consult and treat with his Prelates and Nobles, & *de communi consilio regni* shall be there ordained, as appeares by the Writ. Here is no separate power given over the kings people to them, but onely *ad faciendum & consentiendum*, and in all times this hath been expounded and restrained to that which concerned their own Members in relation to the publique Service, as they are Members of the corporate Body

4. pars inst.
23, 24, 25.

Body of the Parliament, whereof the king is the Head.

But that the House of Commons have committed any man for Treason, Murder or Felony, or for any offence that had no relation to a Member of the House of Commons, as it is against Law and Reason, so no instance can be given till this Parliament.

All Questions and Trials where Witnesse are examined, the Examination is upon Oath by the Law, by all our Books, Statutes, every dayes practice. Examination without an Oath, is but a loose Discourse; therefore the House of Commons not claiming power to give Oath, have no power to examine any man.

19. H. 6. 45.

22. E. 4. 12

5. H. 4. c. 8.

3 H. 6. 46.

No man shall be imprisoned by the King or his Council, unlesse it be by Indictment, presentment of his good and lawfull Neighbours where such deeds be done, in due manner, or by proesse made by Writ original at the Common Law: this Statute rehearseth *Magna Charta*, p. 29. and expounds *Lex terre*, the Law of the Land there mentioned: this Law bindes all men, and the House of Commons (for they say, they are of the Kings Council) in all points, but only against the Disturbers of the service of the parliament; and

25. E. 3. c. 4.

Petition of

Right,

3. Car.

therefore the Imprisonment of several persons who are not their Members, and for no disturbance to their Members, is utterly against the Law of the Land, and the Franchise of the Free-men of this Realme.

Cui non licet quod minus, non licet quod majus; he who may not do what is lesse may not do what is greater; they cannot commit a Man for Murder or Felony, much lesse for Treason.

8. pars, Cook

110.

27. H. 6. 3.

No Court can fine and imprison, but a Court of Record, the House of Commons is no Court of Record, the House of the Lords where the King is in person, his Nobles and his Judges, and Councel at Law, the Masters of the Chancery assisting, is a Court of Record, and that is the Court of parliament, where the *Colloquium & tractatus* is. The House of Commons may present Grievances; grant or not grant Aides, consent or not consent to new Laws, but for fining or imprisoning any but as aforesaid, is but of a late date, and no ancient usage: They have no Journal Book, but sithence *Edw. 6. time 6 Hen. 8. cap. 15.* doth not prove the House of Commons to be a Court of Record, it mentions onely to be entred on Record in the Book of the Clerke of the parliament

21. E. 4.
fel. 46.

if

if any Member depart into the Countrey. There is no Journal but since *Edw. 6.* time, and that is a Remembrance or Memorial, as *12.H.4.23.* Commons in Parliament ne sont Iadges.

The whole parliament is one corporate Body, consisting of the Head and three Estates; the Court is onely there where the *Consilium & tractatus* is, where the consult and treaty is with the king, which is in the House of Lords onely.

The House of Commons claime not to examine upon Oath any Man; no Court can be without a power to give an Oath, Courts Baron, Court of Piepowders, County-Court, may and do give Oath: No Court can be without a power to try, no triall can be without Oath; and therefore the House of Commons not claiming power to give an Oath, can bring no matter to triall, and consequently can be no Court.

The behaviour of the Commons at a Conference with the Lords; the Commons are alwayes uncovered, and standing, when the Lords sit with their hats on, which shewes they are not Colleagues in judgement: for fellow-judges owe no such reverence to their Companions.

When was ever Fine imposed by the House of Commons treated in the

11.H.4 c.11

Exchequer : The ejecting of a Member, who hath sitten, is against the Law : for they cannot remove a man out of the House unduly returned, much lesse a man returned duely.

1. H. 4. c. 1.
1. H. 5. c. 1.
3. H. 6. c. 7.
23. H. 6.
c. 15.

3. Ed. 4. 20.
5. Ed. 4. 41.

By these Lawes it appeares, that if any undue returne be made, the person returned is to continue a Member, the Sheriffes punishment is 200. l. one to the King, another to the party that is duly elected, Imprisonment for a year without Bail or Mainprise ; and that person who is unduly returned, shall serve at his own charge, and have no benefit at the end of the parliament by the Writ *De solutione iudiciorum Militum, Civium & Burgensium Parliament.* And the triall of the falsity of the returne, is to be before the Justices of the Assizes in the proper County, or by Action of Debt in any Court of Record. This condemnes the Committee for undue Elections, which hath been practised but of late times ; for besides these Lawes, it is against a Maxime in the Common-Law : an Averment is not receivable against the returne of the Sheriffe, for his Returne is upon Oath, which Oath is to be credited in that Suit wherein the Returne is made.

The said Statutes condemne and make

make those Members no Members, which were not resident in the County and Boroughs, for which they were elected, at the time of the teste of the Writ of the Summons of the Parliament, and any abusive practice of late times to the contrary is against the Law, and ought not to be allowed.

Assault upon Parliament-men.

If a Parliament-man, or his Menial Servant be assaulted, beaten, or wounded, in the Parliament-time, proclamation shall be made where the deed is done, that the Offender shall render himselfe to the Kings Bench, within a quarter of a year after proclamation made, & the Offence there to be tried; for Default of Appearance the Offender is declared, attainted of the Misdemeanor, and it is accorded that thereafter it be done likewise in the like case.

5 H. 4. c. 16.
11 H. 6. c. 11.

Serving of proceffe upon a Lord of the Parliament punished in the Lords House.

Bogo de
Clare 18. B.
3. 4. pars
inst. fol. 241
10. Tborns-
byes case,
Clerke of
the Parl
ibid. 10.
B. 3.

Serving of proceffe upon *Thornsby* inquired of in the *Chancery*, and there the Offenders were convicted.

The premises prove, that breaches of privilege of Parliament may be punished

punished else-where than in Parli-
ment.

Upon all this Discourse, it is easie
to discern what fruits may be expect-
ed from this Parliament, continuing
as long as the two Houses please; and
that there is no safety for this com-
mon-wealth, but by the Observations
of their ancient Franchises, cu-
stomes and Lawes.

Conclusion.

I Say again, that without an Act of
Oblivion, a gracious general Pardon
from His Majesty, the Arrears of the
Souldiers payd, a favourable regard had
to tender Consciences; there will be nei-
ther Truth nor Peace in this Land;
nor any man secure of any thing he
hath.

AN

AN
APOLOGY
FOR THE
ARMY,

Touching the eight
Quæres, &c.



L O D O N,
Printed in the Yeare,
1648.

EDUCATION

ARMY

Touching the eight
Queens, &c.

8888

LODOY

Printed in the Year

1648.



AN APOLOGY FOR THE ARMY.

THese Treasonable and insolent *Queries* make the *Gratton* Army the Houses Subjects, fol. 118. and not the Kings. *None by Stamford,* the *Lawes of this Land can* fol. 2. in this Kingdom have an Army but his Majesty.

It appeares, the Army doth now now evidently perceive, that they were misled by the specious pretences of *Salus populi*, the maintenance of the Kings Honour, and of the maintenance of the Lawes of the Land, and Liberties of the Subject, to take up Armes against their naturall Liege Lord and Sovereigne the King: the people is the Body, the King is the Head; Was the Body safe when the Head was distressed and imprisoned?

For

Mag. Chart.
c. 1. & ult.
All the Acts
concerning
the King,
Church,
and Church-
men.
25. Ed. 1.
cap. 1.

For Lawes and Liberties have not the prevailing party in the two Houses destroyed above an hundred Acts of Parliament, and in effect *Magna Charta*, & *Charta de Foresta*, which are the common Lawes of the Land? Doth Excise, the Fifth and Twentieth parts, Meal-money, and many more Burdens which this Land never heard of before, maintain the Liberties of the people? You and that party of the two Houses, made the Army by severall Declarations before Engagement, believe that you would preserve the Kings Honour and Greatnesse, the Lawes and Liberties of the people; The Army and the whole Kingdom now *facta vident*, see your Actions, and have no reason longer to believe your Oathes, Vowes, and Declarations; and since that party in the two Houses refuse to performe any thing according to their said Oathes, Vowes, and Declarations, the Army and the Kingdom may and ought, both by your own principles, and the Lawes of the Land, to pursue the ends for which they were raised. And so your first *Quære* is resolved; whereby it is manifest, that specious pretences to carry on ambitious and pernicious Designes, fix not upon the Army, but upon

upon you, and the prevailing party in both Houses.

The solution of the second Quere.

The Army, to their eternall honour, have freed the King from imprisonment at *Holmby*. It was High Treason to imprison His Majesty: To free his Majesty from that imprisonment was to deliver him out of Trayterous hands, which was the Armies bounden duty by the Law of God and the Land. That party refused to suffer his Majesty to have two of his Chaplaines for the exercise of his Conscience who had not taken the Covenant; free accessse was not permitted; doth the Army use his Majesty so? all men see that accessse to him is free, and such Chaplaines as his Majesty desired are now attending on his Grace: Who are the guilty persons, the Army, who in this Action of delivering the King, act according to Law, or the said party who acted unreasonably against the Law? Who doth observe the Protestation better, they who imprison their King, or they who free him from prison?

That this Army was raised by the Parliament, is utterly false. The Ar-

my

3 par. Inst.
f. 12. 39. El.
1 Iac. 1 bi. 3.
& 2. E. 6. c. 3.
11 H. 7. c. 1.

my was raised by the two Houses upon the specious pretences of the Kings Honour, common safety, and the preservation of Lawes and Liberties; which how made good, hath been shewed before, and all the people of the Kingdom do finde by woſull experience.

The two Houses are no more a Parliament, than a Body without a Head a Man. The two Houses can make no Court without the King; they are no Body Corporate without the King; they all, Head and Members, make one Corporate Body. And this is so clear a Truth, that in this Parliament, by the Act of 17. *Caroli* it is declared, That the Parliament shall not be dissolved or prorogued but by Act of Parliament: but the two Houses may respectively adjourne themselves. Two Houses and a Parliament are severall things, *Cuncta fidem vera faciunt*; all circumstances agree to prove this truth. Before the *Norman* Conquest, and since to this day, the King is holden *Principium, Caput & Finis*, that is, the beginning, Head, and chiefe end of the Parliament, as appeareth by the Treatise of the manner of holding of Parliaments made before the *Norman* Conquest; by the Writ of Summons of

14.H.8.3.
36H.7.Dier
60. 4 pars
Instit. p.1.3.
12.14.
16R.2. c.1.
5 Eliz.c.2.
17 Carol.
The Act for
the continu-
ance of this
Parliament.

4 par. Instit.
p.18.
4 par Instit.
p.4.9.
5 Eliz.c.1,2.

of Parliament whereby the Treaty and *Parler* in Parliament is to be had with the King onely ; by the Common Law, by the Statute-Law, by the Oath of Supremacy taken at this, and every Parliament, it doth manifestly appeare, that without the KING there can be no colour of a Parliament.

How many Votes have they revoked in one Session, yea, and Bills ? Was there ever the like done ? Nay, is not the constant course of Parliaments violated and made nothing thereby ? They are guarded by armed men, divide the publike Mony among themselves, and that party endeavours to bring in a Forraigne Power to invade this Land againe. If they be no Parliament, as clearly they are none without his Majesty, they have no privileges, but do exercise an Arbitrary, Tyrannicall and Treasonable power over the people.

By the Law of the Land, when Treason or Felony is committed, it is lawfull for every Subject, who suspects the Offender, to apprehend him, and to secure him so that Justice may be done upon him according to the Law.

You say, the disobedience of the Army

7 E. 4. 23.
8 E. 4. 3.
9 E. 4. 27.
4 H. 7. 18.
27 H. 8. 23.

Army is a sad publick president, like to conjure up a spirit of universall disobedience. I pray object not that conjuring up to the Army, whereof you and the prevailing party in the Houses are guilty, who conjured up the spirit of universall disobedience against his Majesty, your and our onely Supreme Governour, but you, and that party in the two Houses, and even then when the House of Commons were taking and did take the said Oath of Supremacy? For the Covenant you mention, it is an Oath against the Lawes of the Land, against the petition of Right, devised in *Scotland*, wherein the first Article is to maintaine the Reformed Religion in the Church of *Scotland*. And certainly there is no Subject of the English Nation doth know who the Scottish Religion is. I beleeve the Army tooke not the Covenant. No man by the Law can give an Oath in a new case without an Act of parliament; and therefore the imposers thereof are very blameable, and guilty of the highest Crime.

The Writer of these *Queres* seems to professe the Laws; let him declare what Act of parliament doth justifie the tending, giving, or taking of the said Oath: he knoweth there is none
he,

2. par. Coll.
of Ord. pag.
8. 3.
3 par. Inst.
fol. 165.
Petition of
Right, 3 Car.
2 pars instit.
719.

he knoweth that all the parts of it are destructive of the Laws and Government to maintaine which the Law of Nature, and the Law of the Land had obliged them. The Oath of the Covenant makes the Houses supreme Governours in causes Ecclesiastical; the oath of Supremacy makes the King so : and yet both taken by the same persons, at the same time. What credit is to be given to persons who make nothing of Oathes, and contradict themselves? How doe the Covenant & the Oath of Supremacy agree? How do their protestation and the Covenant agree? How do their Declarations and Oaths agree? The Lord be merciful to this Land for these Oaths.

Mag. Chart. cap. 1. & ultimo Articuli cleri, and many other Statutes. 16 B. 4. 10;

It is a sad thing to consider that so many Gentlemen who professe the Lawes, and so many worthy men in both Houses should be so transported as they are, knowing that the Lawes of the Land from time from to time, and in all times, are contrary to all their actions, and that they yet should amuse themselves and the people with the word parliament without the King and with the Covenant; whereas they know they are no Parliament without His Majesty : And that English men throw out the Kingdome should swear

a Covenant to preserve the Reformed Religion of *Scotland*, in Doctrine, Worship, Discipline and Government, which they doe no more know than the Doctrine, Worship, Discipline and Governmentment of *Prefter John in Ethiopia*; if they consider it, they cannot but discern that this is a high desperate and impious madnesse.

Be wise in time: Without the King and the Lawes, you will never have one hour of safety for your Persons, Wives, Children or Estates. Be good to your selves and to your Posterities; apply your selves to be capable of an Act of Oblivion, and of a generall Pardon, and to be able and willing to pay the Souldiery, and to allow a reasonable liberty for mens consciences; and God will blesse your endeavours; and the people (to whom you are now very hatefull) will have you in better estimation.

The third Queere is thus answered.

You resemble the Army to *Jack Cade* and his complices, and you cite the Act of Parliament of 31 *Hen. 6. cap. 11*. And that it may appeare who acts the part of *Jack Cade*, you and that

that party in the two Houses, or the Army, I think it necessary to set down the said Act in words at length as followeth.

First, *whereas the most abominable Tyrant, horrible, odious and arrant false Traytor Iohn Cadecalling* and nameing himselfe sometime *Mortimer*, sometime Captaine of *Kent*, which name, fame, acts and feates are to be removed out of the speech and minds of every faithfull Christian man perpetually, *falsly and traiterously purposing, and imagining the perpetuall destruction of the Kings said Person, and finall subversion of this Realm, taking upon him Royall Power, and gathering to him the Kings people in great numbers, by false subtiler imagixed language, and seditiously making a stirring Rebellion and Insurrection, under coulour of Justice, for Reformation of the Lawes of the said King, robbing, stealing and spoyling great part of his faithfull people.* Our said Sovereigne Lord the King considering the premises, with many other which were more odious to remember, *by the advice and consent of the Lords aforesaid, and at the request of the said Commons,* and by authority aforesaid, hath Ordained and Established that the said *Iohn Cade*, shall be reputed had, named,

med, and declared a false Traytor to our Sovereigne Lord the King ; and that all his tyranny, acts, feates and false opinions shall be voyded, abated, nulled, destroyed, and put out of remembrance for ever : and that all Inditements, and all things depending thereof, had and made under the power of Tyranny, shall be likewise void, annulled, abated, repealed, and holden for none : and that the blood of none of them be thereof defiled nor corrupted, but by the authority of the said Parliament clearly declared for ever : and that all Inditements in times coming, in like case, under power of Tyranny, Rebellion and Stirring had, shall be of no Record nor effect, but void in Law ; and all the petitions delivered to the said King in his last parliament holden at Westminster. Novemb. 6. in the 29. of his reigne, against his mind, by him not agreed, shall be taken and put in oblivion, out of remembrance, undone, voided, annulled, and destroyed for ever, as a thing purposed against God and Conscience, and against his Royall Estate and preeminence, and also dishonourable and unreasonable.

Now we are to examine who hath trod in the steps of *Jack Cade*, you and the

the present prevailing party of the two Houses took upon them, and doe take all the Royall power in all things ; so did *Iack Cade*, as appeares by the said Act; the Army do not so : They who imprison the King purpose to destroy his person (our imprisoned Kings alwaies feared so) *Iack Cade* did likewise so purpose : The said party in the two Houses made a stirring under colour of iustice for reformation of the Lawes ; so did *Iack Cade* : The Army doe not so, but desire that the Lawes should be observed : *Iack Cade* levied warre against the King, The Army preserves Him : *Iack Cade* dyed a Declared Traytor to his Sovereigne Lord the King ; this Army might have lived to have the glorious true Honor of being restorers of their King.

Simon Sudbury Archbishop of Canterbury was murdered by *Iack Straw* : *William Laud* Archbishop of Canterbury was likewise murdered by that party of the two Houses, for that an Ordinance by Law cannot take away any mans life, and his life was taken away by an Ordinance of the two Houses, the Army had no hand in it. Many misled by *Iack Straw*, perceiving his Trayterous purposes, fell from him : and as that was lawfull, just,

H and

* Edward 1.
Henry. 6.
Richard 2.

25 Ed. 3. 4.
28 Ed. 3. 3.
Petition of
Right.

and honourable, so it is for this Army to adhere to their natural King King, and so endeavour to settle the Kingdom again in the just Lawes and Liberties thereof: *London* did then right worthily adhere to the King and the Lawes, and not to *Jack Straw* and his specious pretences, and it is hoped they will now so do: By this it appears, that the Gentlemen Discourse touching *Jack Cade*, fastens altogether on his party, and cleareth the Army.

To the I V. which is resolved thus.

The Arreares of the Army (howbeit it is the least thing they look after) yet being not paid them, it is by the Law of the Land a sufficient cause to leave and desert that party in the Houses: A person who serves in any kinde, and is not paid his wages, the desertion of that service is warrantable by the Lawes of the Land: You say, the Houses will reforme all things when the Army doth disband: Who will believe it? Will any believe that the settling of the Presbytery will do it? Will any believe that his Majesty will passe the Propositions sent to Him to *Newcastle*? Will any man believe that this

Fitz. N. B.

159.

9. Ed. 4. 120.

38. H. 6. 27.

23. Eliz.

Dier, 369.

this Kingdom will ever be quiet, without his Majesty and the ancient and just Lawes? Can the Members of the Army conceive any of them to be safe in any thing without a pardon from his Majesty? Have they not seen some of their Fellowes hanged before their eyes, for actions done as Souldiers? Shall the Kingdom have no account of the many Millions received of the publique Money? Will the Members of the Houses accuse themselves? Shall private and publique Debts be never paid? Shall the Kingdom lie ever unburthens of Oppression and Tyranny? There is no visible way to remedy all these Enormities, but the power of the Army.

To the V. which is solved thus.

The Kingdom hath better assurance of Reformation from the Army, than from the Houses, for that in their Military way they have been just faithfull and honourable, they have kept their words: That party of the Houses have been constant to nothing but in dividing the publique Treasurie among themselves, and in laying Burdens upon the people, and in breaking all the Oathes, Vowes, and promises they

2, & 3. E. 6. ever made : As the Army hath power
 c. 2. so now adhering to the King, all the
 11. H. 7. c. 1. Lawes of God, Nature, and Man,
 Calvins ease, 7. pars, are for them, their Armies are just,
 Cook, fo. 11. and blessed ; and the King is bound in
 justice to reward his Deliverers with
 honour, profit, and meere Liberty of
 conscience.

To the V I. *Quere.*

All the sixth *Quere* containes cal-
 umnies cast upon the Army ; the new
 Elections are against all the Lawes
 mentioned in the Margin, and are
 against the Ejection of the old Mem-
 bers ; and by this it may be judged,
 what a House of Commons we have.
 By the said Lawes it appeares, that if
 any undue returne be made, the person
 returned is to continue a Member, the
 Sheriffes punishment is two hundred
 pounds, one to the King, and the
 other to the party that is duly elected ;
 Imprisonment for a year, without Bail
 or Mainprise ; and that person who is
 unduly returned shall serve at his own
 charge, and have no benefit at the end
 of the Parliament, by the Writ *De so-
 lutione Militum, Civium, & Burgensium
 Parliament.* And the triall of the fal-
 lacy of the Returne, is to be before the

Justices

Justices of Assizes in the proper County, or by Action of Debt in any Court of Record. This condemnes the Committee for undue Elections, which hath been practised but of late times: for besides these Lawes, it is a Maxime of the common-Law, an Averment is not receivable against the Returne of the Sheriffe, for his Returne is upon Oath, which Oath is to be credited in that Suit wherein the Returne is made.

3. Ed. 4. 20.

5. Ed. 4. 41.

The said Statutes condemne Elections of such men who were not resident and dwell in the County or Boroughs for which they were returned; and any abusive practise of late times to the contrary, is against the Law, and ought not to be allowed.

To the VII. *Quere.*

The *Quariff* saith, that the Votes of the Independents in the Houses were arbitrary, exorbitant, and irregular; and that they disposed and singled more of the common Treasure than others: That whole *Quere*, I believe is false and slanderous; and the Authour ought to make it good, or else to undergo the Law of *Talion*; which is to suffer such punishment, fail-

37. Ed. 5.

c. 17.

ing of his proof, as the accused should
in case of proof made.

To the VIII. Quere.

This *Quere* is all minatory and threatening, and the contrary of every part is true: by the deliverance of the King and Kingdom from the bondage of that party in the two Houses by the Army, their renown will be everlasting; they secure themselves, they content and please the Kingdom, City and Countrey, as appears by their confluence to see his Majesty and the Army, and their acclamations for his Majesties safety and restitution; all which doth evidence to every one of the Army, how acceptable the intentions of the Army are to the people of this Land, who have been so long intralled.

Sir *Thomas Fairfax*, let your Worthinesse remember your extraction and your Ladies, by the grace and favour of the Prince, to be in the rank of Nobility; Remember what honour and glory the present Age and all posterity will justly give to the Restorer of the King to his Throne, of the Lawes to their strength, and of the afflicted

ould afflicted people of this Land to peace:
 Let the Colonels and Commanders
 under You and likewise your Soul-
 diery, rest assured, that they shall not
 onely share in the renown of this
 and Action, but also shall have such Re-
 very muneration as their haughty courage
 the and so high a virtue doth deserve. This
 day his Majesty can and will do, the Hou-
 y the ses neither will nor can : and God
 la bleffe you all and prosper you.

con- I Conclude all, as I have alwayes done :
 City Without an Act of Oblivion, a gene-
 hel Pardon, the Arreares of the Soul-
 the diery payd, and a regard to Liberty of
 his conscience, this Kingdom will certainly be
 all reined.

H 4 Iudge

[illegible]

I have been thinking of you a great deal lately
 and wondering how you are getting on. I hope
 you are well and happy. I have been very busy
 lately but I will try to write to you more often.
 I am sure you will understand. I am sure you
 will be well and happy. I am sure you will be
 well and happy. I am sure you will be well and happy.

Judge Ienkins P L E A

Delivered in to the Earl
of *Manchester*, and the
Speaker of the House of
COMMONS,

Sitting in the CHANCERY at
WESTMINSTER,

Which was read by their Command in
open Court, the 14th of *Febr.* 1647.
And there avowed.

By DAVID IENKINS Priso-
ner in *Newgate*.



o L O N D O N,

Printed in the Year, 1648.

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Judge Jenkin's

P L E A

Delivered in to the

Earle of *Manchester*,

and the Speaker of the House

of COMMONS, sitting in

the CHANCERY at

WESMINSTER.

I Have been required to appear in the Chancery the Twelfth of this instant *February*, before Commissioners appointed by the two Houses for the keeping of their Great Seal, and managing the Affaires of the Chancery.

I cannot, nor ought, nor will submit to this power; I am a Judge sworn to the Lawes. The Law is, First, that this Court is *Coram Rege in*
Cap-

4. pars inst. fol. 79.
 8. H. 4. fol. 5.
 9. H. 4. f. 15.
Cancellaria: Secondly, the Chancellor or Keeper of the great Seale is by delivery of the great Seale to him by the K I N G, and by taking of an Oath.

The Oath followeth in these words.

42. pars inst. fol. 88.
 10. R. 2. rot.
 Parl. num. 8.

1. Well and truly to serve our Sovereigne Lord the King, and his people in that Office.

2. To do right to all manner of people poor and rich, after the Lawes and usages of this Realm.

3. Truly to Counsell the King and his Counsell to conceale and keep.

4. Not to suffer the hurt, or disheriting of the King, or that the Rights of the Crown be decreased by any means as far as he may let it.

5. If he may not let it, he shall make it clearely and expressly to bee knowne to the King with his advice and counsell.

6. And that he shall doe and purchase the Kings profit in all that he reasonably may, as God him help, and the contents of Gods booke.

The said Commissioners among others have imprisoned their King, have declared to the Kingdome that they will make no Addresles or Applications to him, nor receive any from him.

Declar. 17.
Jan, 1647.

Have counterfeited a new great Seal, and after destroyed the true old great Seale which belonged by the Law to the Kings custody.

Articuli sup.
chartres c. 5.

These Commissioners have had no Seale delivered to them by his Majesty, have taken no such Oath, or full ill kept it, and for these evident reasons grounded upon the Fundamental Lawes of this Land, these Commissioners have neither Court, Seale, or Commission, and therefore I ought not against the Lawes, against my knowledge, and against my conscience submit to their power.

To affirme that they maintaine the Kings Power and Authority in relation to His Lawes (as they often doe) and restraine onely his Person, is strange.

They must be remembered that the House of Commons this Parliament gave in charge to Mr. Solicitor upon the prosecution of the Bill of attainder against the Earle of *Strafford*, to declare the Law to be, *that Machina-*

M. Solicitor
pag. 27.

(176)

tion of War against the Lawes or Kingdome, is against the King, they cannot be severed:

Mr. Pim,
Pa. 16.

Mr. Pym had in charge likewise upon the same prosecution to declare, *That the King and his people are obliged one to another in the nearest relations, he is a Father, and the child, in law is called pars patris, he is the Husband of the Common-wealth, they have the same interests, they are inseperable in their condition be it good or evill; he is the Head, they are the body, there is such an incorporation as cannot be dissolved without the destruction of both.* This agrees with our Lawes, and the Law of this Land: In that argument of Mr. Solicitor, and discourse of Mr. Pim directed by the House of Commons are contained the true rights, liberties and laws of the people deduced from our Ancestors in all ages, and wherein there is no line or word but is agreeable to the Lawes, and is a necessary and usefull booke to be perused, and followed by all; which booke was published by Order of the House of Commons. If the doctrine of that booke had been followed, we had not been so miserable as we are; neither had these great evils ensued, for the which the Land mourns.

In

20. H. 7. fol.
7.
8. H. 7. fol.
12.
1. Ed. 5. fol.
3.
4. Ed. 4. fol.
25.
5. Ed. 4. fol.
29,

In this Moneth of *February*, six years
 now past, the onely Difference be- Collect. of
Ordinances,
1. pars,
fol. 66, 67,
 tween his Majesty and the prevailing
 party in both Houses was touching the
 power of the *Militia*, which in plain

English is, Power over Sea and Land :
 this was the sole quarrell : the King
 and his Progenitours have had it in all
 Times, the Lawes have fixed it upon
 them, they have used it for the Weal of
 the people : none of the Subjects ever
 had it or claimed it ; the Lawes deny
 it them ; for the time they have had it,
 our pressures have been miserable.

His Majesty hath a numerous Issue,
 and so hath his Father : many great
 persons of *England*, and *Scotland* are of
 the Bloud Royal, and all the Kings of
Christendom are of the same Bloud, so
 long as the Lawes last, or any of the
 said persons, or their Descendants be
 living, this people shall have neither
 peace nor profit ; but all the confusions
 that are imaginable will attend them.

And therefore (at length) be good to
 your selves, restore our King, receive
 from Him an Act of Oblivion, a ge-
 neral pardon, Assurance for the Ar-
 reares of the Souldiery, and meet satis-
 faction to tender consciences.

February 12.
 1647.

By *David Jenkins*,
 Prisoner in Newgate.

A

I

V

A

THE
ANSWER
OF
Iudge Jenkins,
TO THE
IMPUTATION
PVT VPON HIS
PLEA
IN
CHANCERY.

Which was read in open Court the
14. of Febr. 1647.

And avowed by *David Jenkins* Prisoner
in *Newgate*.



inted in the Year, 1648.

THE
ANALYSIS

OF
THE
LIFE OF

TO THE
IMPERIAL

OF THE
P. L. E. A.

IN
THE
P. L. E. A.

Which was read in open Court the
1st of Nov 1847

By the

1848

1848



THE
ANSWER^r
OF
Judge Jenkins,
TO THE
IMPUTATION
Put upon him in
CHANCE R.

I Have no disposition, nor ever had, to be known by any public Writing: these miserable Times, which fill many mens mouths, and most men eares with notorious Untruths, thereby to blast and destroy the Kings Sacred Majesty, his Lawes and Government, and to bring in a confusion; enforceth me at this time (who formerly have written nothing but for the publique)

to

to let the World know how unjustly the Pamphleter of this Week, Licensed by our Reformers, hath traduced me touching a Suit commenced in their Court of *Chancery* against me, by one *M. Ervely* a *Wiltshire* Gentleman, touching the Estate of one *M. Thomas* of *Glamorganshire*: the Truth whereof is as followeth:

M. Thomas, whose Father and my Grandfather were two Brothers, about seventeen yeares past made his Will, and declared by the same his Son (being then of very tender yeares) a Ward to his Majesty, and made him Executour, and my selfe during his minority, (referring to his Wardship) to Administer his Estate personal and testamentary, and to be accountable to his Son when he came to Age: And seventeen yeares since the Father died.

This Estate consists in a Stock of Sheep, so disposed by me as the number are yet continued, and for the number and condition, they were at their Delivery backe, to be made as good by those persons who had the charge of them, as they were when they were received.

The rest of the Estate (for any considerable part) was in Mortgages of Land,

Land, forfeited in the life of my young Cousin *Thomas* for many of them, and many absolutely purchased by me in his name in his life time, for the which I am not yet payd.

The Land discended, and ought, upon Sir *Edward Thomas*, my Cousins Heire at Common Law; so that Mr. *Erneley*, the Plantiffe in *Chancery*, hath no colour for the Land: For my young Cousin dyed without issue about 17 yeares old, and could not dispose of the Inheritance of any Land by any pretended Will: The stock of Sheep remaines, if the Plaintiffe and the *Reformers* have not Plundered them: For the Mony it came all to the Court, it was to satisfie the King for the Marriage.

The colour the Plaintiffe hath, is this: After the death of my old Kinsman *M. Thomas*, by undue means the young Gentleman was married to *M. Erneleys* Daughter, in a way of Ravishment, being both children, without one penny payd, or consent of Friends or Kindred: For the which, a Suite of Ravishment depended against *M. Erneley* and others in the Court of *Wards*.

The young Gentleman dyed about 17. yeares of age, sithence these confusions

fusions, without issue; and some houre before my young Cousins death (who dyed of a pestilent Feaver) Mr. *Erneley* pretends a Will made by him, and that he made his Wife (M. *Erneleyes* Daughter) his Executrix: His said Wife dies soon after, & is pretended to make a Nuncupative Will, and to make her Father (M. *Erneley*) her Executor, and so pretends as Executor of an Executor of an Executor: which pretended Wills, he saith he hath proved in the Courts of his Freinds, the *Reformers*.

Whether such Wills were made or no, must receive an equall examination, and of what validitie they are, being pretended to be made by children *in extremis*, if made at all? And whether an Executor of an Executor of an Executor can maintaine an account by the Law of the Land? And whether (I being Executor during the Minority, *viz.* the Wardship) my young Cousin could make such a Will as is pretended, he being no Executor till his full age.

The age touching Wills, the Law of this Land determines to be 21 yeares, and before that age at common Law an use could not be devised. For Wills touching goods and chattels, our Law
for

for many ages hath left the same to the
decession of the Civill and Cannon
Lawes, in the Bishops Courts: That
Law, (as *Justinian* hath it in the se-
cond Booke of his *Institutions*, the 12.
chap.) is, *Impuberi non licet testari*: this
Pubertas begins at 14. it is *Plena pu-*
bertas at 18 yeares of age: The que-
stion is, whether this *jus testandi* is in
pubertate plena, or *pubertate incepta*:
Pigots Case, 5. part of *Cookes Reports*,
the Doctors affirmed, that 17 years of
age was a full age as to an infant Ex-
ecutor to dispose of Goods: this opi-
nion hath been by others since de-
nyed. Sir *Edward Cooke* 11 part, *Instit.*
lib. 123. saith, He must be 10. which is
the time of *plena pubertas*. 2 Hen. 4.
an infant of 18. years of age may
be a devisee. Sir *Jo. Dodderidge*
in his Booke called, *The Office and*
Duty of Executors; which they say is
his, and it is a learned and laborious
Treatise, fol. 347. delivers, that this
opinion of 17. yeares, for that ability
in an infant, hath been reported other-
wise: This latter opinion comes nea-
rer the Common Law, and the Sta-
tute Law of the Land: which Com-
mon Law, and Statute Law, gives in-
fants no power by Deed or Will to
make any disposition of any thing
they

they have, before they be 21. yeares of age.

It seems also more reasonable, because infants at 18 yeares have, by the intendment of Law, as they grow in yeares, more use of reason, to discern what is fit for them to doe and act. And for a meere stranger to sue in a Court of Conscience, who pretends by such Wills of infants (the infant Husband being ravished) against the will of the Kindred of the deceased, who dyed six yeares silence without issue (being 17 years of age) and that any part of his part of his estate should go that way by a course of Equitie; unlesse the Law be for Mr. *Erinchy*, who payd not a penny with his Daughter, and who would have the Husband of his Daughter bring him a Portion, by his pretended title of an Executor of an Executor of an Executor, viz. of an infant the Executor of another infant, the Executor of a third person, seems very strange.

The said Licensed Historiographer of theirs, hath published the 16 of this present Moneth of *February*, 1647. That I out of a desire to keepe the Estate, have in a suite in the Court of wards, in my Cousins life time, pleaded to the Jurisdiction of that Court. It is true, I

did

did so : for J conceived that the Estate would be unsafe in Mr. Erneley's hands, and I was willing to preserve it till my young Couzen came to be of age, to dispose of it himselfe, according as I was trusted.

The Law being, that the Court of *wards* had no jurisdiction over the personal Estate (for then the Marriage was payd for to the King, and all due to the King ascertained.) It is true, that that was insisted upon as was just, for to preserve the Estate from Mr. Erneley, who would have made what account he pleased to my Cousin at his full age: And this is the truth of that businesse.

31 H. 8. c. 46
4 pars inst.
fol. 201. 202

That I declined not the Jurisdiction of the *Chancery*, to keep an Estate in my hand, appeares, by my declining long sithence the Power of the House of Commons to examine me; and the *Reformers* have all my Estate : What would Mr. Erneley have, when they (the *Reformers*) have all already, or can have from me, if hee had any colour ?

J desire the good people of this City to observe what notorious Untruths their Licensed Histographers publish, to delude the people: In this particular Case they publish,

I

First,

First, That the Suite againſt me, is in the behalfe of an Orphan: M. Earnley (who is Plaintiffe in their Court) is a Wiltſhire Gentleman, at the leaſt of 50. years of age; there is their Orphan.

Secondly, That I made a ſpeech to the people at the Hall door, that the queſtioning of me for what I had done for the KING, was illegall; and that the Judges had no power to try me, the KING being abſent: Another notorious untruth! For I promiſed to God, all that I ſaid was onely this, God preſerve the KING, and the Lawes.

Thirdly, it is ſaid that coming to the Barre, I ſtirred not my Hat: All the Lawyers then at the Barre were uncovered; wherefore I held it a civility to be alſo uncovered: and ſo I was, as they all know.

Fourthly, That the Earl of Mancheſter ſhould ſay, I received a great eſtate in Mony, of the Orphans eſtate: As there is no truth in it, ſo it is moſt untrue that the ſaid Lord ſo ſaid (as all men preſent can teſtifie.) The truth is, they carry not what they do, what they ſay, what they ſwear, nor what they write: With the Declaration of a prevailing party of the H. of Cōmons, of the 11th of

in this instant *February*; who contrary to the Oath of Allegiance, the Oath of Supremacy, the Protestation, their solemn League and Covenant, their Declarations to make His Majesty a glorious King, fearfull to his enemies, and beloved of his subjects; and yet now, after 22. yeares, they would insinuate to the people, that this King, whom they have so much magnified, hath poysoned his own Father.

Fiftrly, it is a publike notorious untruth. That the Parliament hath published a Declaration against the King, the 1. of this instant *February*: whereas it is well known to be the Declaration of the prevailing party of the House of All Commons onely, without the Lords: and so they would make that prevailing partie only to be the Parliament.

Let the people of *England* beleve their five senses; how it was with them even yeares agoe, and before, during this Majesties Reign: how this Kingdome abounded then with Peace, Plenty, and Glory, to the admiration & envy of other Nations: and now let them consider and judge by their senses, Whence those men (whom nothing could satisfie, but all Power both by Sea and Land, which in truth is the

*Their licensed Historiographer who published this, is called their Kingdoms weekly Post, from Wednesday Feb. 7. to Wednesday the 16. of Feb. 1647

and Kingſhip, which they call the *Miſ-
tification* have uſurped the ſaid Power Re-
gal, whether they have not by Impo-
ſtures and Deluſions, diffuſed among
the people by themſelves and their A-
gents, brought a flouriſhing Kingdom
to the moſt deplorable condition it
now is in.

To the end that this Kingdom may
not utterly be ruined, God incline
their hearts to reſtore his Maſteſtie, and
for their own and their Poſterities ſake
to receive from his Maſteſtie an Act of
Oblivion, a generall Pardon, aſſurance
for the Arrears of the Souldierie, and
meet ſatisfaction for tender Conſci-
ences.

DAVID IENKINS.

Judge

Judge Fenkin's
Remonstrance
TO THE ^{cf}
L O R D S
AND
C O M M O N S
OF
The two Houses of
PARLIAMENT, at
WESTMINSTER,
the 21th. of *February*, 1647.

By *DAVID FENKINS*,
Prisoner in *Newgate*.



Printed in the Yeare, 1648.

Judge Sewall

Remembrance

TO THE

L. O. R. D.

AND

COMMONS

IN THE TWO HOUSES OF

PARLIAMENT

IN THE YEAR 1791

BY

BY DAVID NEWING

Printed in New York

at the Office of the

Printer in the Year 1791



Fudge Fenkin's
REMONSTRANCE
TO THE
LORDS and COMMONS
AT
WESTMINSTER.

I Desire that the Lords and Commons of the two Houses, would be pleased to remember, and that all the good people of *England* do take notice of an Order of the House of Commons this Session, for publishing the Lord *Cook* his Bookes: which Order they may finde printed in the last Lease of the second part of his Institures, in these words: *viz.*

Die Mercurii 12. May, 1641.

UPon Debate this Day in the Commons House of Parliament, the said House did then desire, and held it fit, that the Heir of Sir Edward Cook should publish in print the Commentary upon *Magna Charta, the Pleas of the Crown, and the jurisdiction of Courts*, according to the intencion of the said Sir Edward Cook; and that none but the Heir of the said Sir Edward Cook, or he that shall be authorized by him, do presume to ~~publish in print~~ any of the fore-said Bookes, or any Copy thereof.

H. Elsynge Cler.
Dom. Com.

And I do further desire them that they would reade and peruse M. *Sauvageur Saint-Iohn*, and M. *John Pryn*, their Bookes, published likewise this Session, whose Titles are as followeth, viz.

*An Argument of Law con-
cerning the Bill of Attainder
of High Treason of Thomas
Earle of Strafford.*

*At a Conference in a Com-
mittee of both Houses of Par-
liament.*

*By M. Saint-Iohn His
Majesties Solicitour General.*

*Published by Order of the
Commons House.*

*London, Printed by G.M.
for Jo. Barlet, at the Signe
of the Gilt Cup, near
S. Austins Gate in Pauls
Church-yard, 1641.*

And the Speech or Declaration of John Pym Esquire,

After the Recapitulation or summoning up of the Charge of High Treason, against Thomas Earle of Strafford, 12. April, 1641.

Published by the Order of the Commons House.

L O N D O N,

Printed for John Bartlet,
1641.

I. Nothing

1. **N**Othing is delivered for Law in my Books, but what the H. of Commons have avowed to be Law in Bookes of Law, published by their command this Session, and agreeable to the Bookes of Law, and Statutes of this Realme, in all former Times and Ages.

2. The supposed offence charged on me is against the two Houses, and none ought to be judges and parties, by the Law of hi Land, in their own case.

3. I desire the benefit of *Magna Charta, the Petition of right*, and other good Lawes of this Land, which ordain that *all mens Trials should be by the established Lawes, and not otherwise*: they are the very words of the Petition of Right.

An Ordinance of both Houses is no Law of the Land, by their own confession; and by the Bookes of the Lord Cook, published by their Order, as *1. Part. col. of Ordinances, fol. 728. 2. Pars inst. fol 47, 48. 157. 143. 4 par inst. 23. 232. 298. 4. H. 7. 18.* *aforsaid*, this Session in six severall places.

For *Sedition*, in my Bookes there is none, but such as they have *authorised this Session, to be published and printed*. To publish the Law is no sedition. These Positions following I do set down for the Law of the Land in my Bookes,

books, and they themselves have justified, and avowed them as aforesaid, we agree the Law to be, and to have been in all Times in all the particulars following, as here ensueth.

3 Pars instit
Pag. 12.

1. To imprison the King is High Treason.

M. Solicitor
Pag. 12.
3. part instit,
Pag. 9.

2. To remove Counsellours from the King by force is High Treason.

M. Pym, p. 28
3 part instit,
3. 10, 12, 16.

3. To alter the establisht Lawes in any part by force is High Treason.

3 part instit,
Pag. 9.

4. To usurpe the Royall Power is High Treason.

5. To alter the Religion establisht is High Treason.

M. Solicitor
P. 30, 31, 36.

6. To raise rumours and give out words to alienate the peoples affections from the King, is High Treason.

M. Solicitor
Pag. 9.

7. To sesse Souldiers upon the people of the Kingdome, with-

without their consent, is High Treason.

8. The execution of paper orders by Souldiers in a military way, is High Treason.

M. Solicitor
pag 9.

9. To counterfeit the great Seale, is High Treason.

M. Solicitor
pap. 24.
4. part inst.
p. 125.

10. The Commission of Array, is in force, and none other.

Iustice Huttons argument, fol.
39, 40.

11. None can make Iudges, Iustices, Sheriffes, &c. but the King: The King makes every Court.

4 part instit.

12. The great Seal belongs to the Kings custody, or to whom he shal appoint, and none other.

2 part instit.
articul.
super chartas cap. 5.

13. Ordinances of one or both Houses are no lawes to binde the people.

1 part, Coll.
of Ordin. &
Cook ut supra.

14. No Priviledge of Parliament, holds for Treason, Felony,

4. part, inst.
25.

*lony, or breach of the Peace,
not for twenty Parliament
men, forty, nor three hun-
dred.*

*1. Solicitor
ag. 8. 70.*

*15. To subvert the funda-
mental Laws, is High Treason.*

*M. Solicitor
pag. 12. 27.*

*16. To levy warre against
the person of the King, is High
Treason.*

*M. Solicitor
pag. 26.*

*17. To perswade Forrei-
ners to levy warre within this
Kingdome, is High Treason.*

*M. Solicitor
pag. 35.*

*18. To impose unlawfull
Taxes, to impose new Oaths, is
High Treason.*

*M. Pym, p.
8.*

*19. The King can doe no
wrong.*

*M. Pym, p.
17.*

*20. It is a pernicious Doct-
rine to teach Subjects, they
may be discharged from the
oath of Allegiance. Then what
means the Doctrine of both
Houses of the Votes 11 of
Feb. 1647.*

21. A

21. *A necessity of a mans owne making, doth not excuse him.* The requiring and forcing of the Militia, brought the necessity of arming upon the Houses. M. Pym, p. 24.

22. *None can levy war within this Realme without authority from the King, for to him only it belongeth to levy war, by the Common Law of the Land to do otherwise is High Treason, by the said Common Law.* The onely quarrell was and is the Militia: for the which so much blood hath been spent, and Treasure. 3. part inst. pag. 2.

23. *No Parliament without the King, he is Principium, caput & finis.* M. Solicitor 70. 71.
4. part. inst. pag. 1. 3. 4.
4. pars inst. 41. 356.

24. *Presentment or tryall by Jury, is the birth-right of the Subject.*

There

There is no doubt but that many in both Houses are free from this *great sin*, and that most of the prevailing party, had at first no intentions to proceed so farre; but the madnesse of the People (who are very unstable, and so they will finde them) and the successe of their Armies (having this great rich City to supply them, with all accommodations) have so elated them, that the evil is come to this heighr.

For my selfe, to put me to death in this cause, is the greatest honour I can possibly receive in this World: *Dulce & decorum est mori pro patria*. And for a Lawyer and a Judge of the Law, to die, *Dum sanctis patrie legibus obsequitur*; for obedience to the Lawes; will be deemed by the good men of this Time, a sweet smelling sacrifice; and by this, and future Times, that I died full of yeares, and had an honest and an honourable end: And posterity will take knowledge of these Men, who put some to death for subverting of the Lawes, and others for supporting of them, &c.

Bracton. l. 3.
c. 9. p. 107.
4 pars inst.
343, 343.
Stanford 92.

Yet mercy is above all the Workes of God, *The King is Gods Vicar on earth*. In Bracton, who was a Judge in Henry 3. time, you shall finde the Kings Oath; *To shew mercy*, is part of it.

You

You are all his children ; say, and do what you will, you are all his Subjects, and *He is your King* and Parent : *Pro magno peccato paululum supplicii satis est patri*; and therefore let not the prevailing party be obdurate, out of a desperation of safety : That which is past is not revocable : Take to your thoughts your parents, your wives, your children, your friends, your fortunes, your countrey ; wherein Forreigners write there is *Mira aeris suavitae & rerum omnium abundantia* : Invite them not hither, the onely way to be free of their company will be, *To restore his Majesty, and receive from Him an Act of Oblivion, a general Pardon, Assurance for the Armeares of the Souldiery, and meet satisfaction to tender consciences.*

God preserve the King and the Lawes,

DAVID JENKINS,
Prisoner in New-gate.

FINIS.

Ex. C. F.
8/14/25